

The Judge's Authority in Issuing Rehabilitation Decisions for Narcotics Abuse is Reviewed Based on Law No.35 of 2009

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ABSTRACT

The authority of judges to impose rehabilitation decisions for narcotics abusers constitutes a crucial component of a justice system oriented toward protection and recovery. Under Law Number 35 of 2009 on Narcotics, particularly Articles 54, 103, and 127, judges are empowered to order medical and/or social rehabilitation for addicts and victims of abuse. This framework reflects a shift from a purely punitive approach to one that emphasizes therapeutic and restorative justice. This study analyzes the legal basis of such authority and finds that judicial discretion is applied within clear normative limits. Decisions must be supported by integrated assessment results, evidence that the defendant is an abuser or addict, and confirmation of non-involvement in illicit trafficking networks. In practice, judges consider juridical, sociological, and psychological factors when determining whether rehabilitation or imprisonment is appropriate. The findings highlight that rehabilitation decisions play a strategic role in achieving the broader objectives of criminal law, including recovery, prevention, and reduction of recidivism. Judges act as key actors in balancing legal certainty, utility, and justice. Effective implementation requires consistent application of legal norms, strong inter-agency coordination, and robust assessment mechanisms. Ultimately, rehabilitation serves not only as a legal instrument but also as a means of protecting human rights and facilitating the social reintegration of offenders.

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1. INTRODUCTION

Narcotics abuse is one of the serious problems faced by the legal system and social system in Indonesia. The circulation and abuse of narcotics not only has an impact on increasing crime rates, but also causes social, economic, and public health losses at large. In this context, the state through legal instruments seeks to control, prevent, and prosecute narcotics crimes. Nevertheless, in law enforcement practice there is a fundamental debate about how to treat narcotics abusers: whether as mere

perpetrators of crimes or as victims in need of recovery (Law Number 35 of 2009 concerning Narcotics, 2009).

The existence of Law Number 35 of 2009 concerning Narcotics brings an important paradigm shift in the policy of narcotics criminal law in Indonesia (Law Number 35 of 2009 concerning Narcotics, 2009). This law not only contains provisions on strict criminal sanctions against narcotics dealers and dealers, but also regulates rehabilitation obligations for addicts and victims of narcotics abuse. Article 54, Article 103, and Article 127 explicitly provide a legal basis for judges to make rehabilitation decisions, both medical and social rehabilitation. This provision shows that the legal approach to narcotics abusers is no longer solely repressive, but also prioritizes therapeutic and rehabilitative aspects (Law Number 35 of 2009 concerning Narcotics, 2009).

Although normatively regulated, in practice the authority of judges in imposing rehabilitation decisions still faces various problems. One of the main problems is the inconsistency in the implementation of rehabilitation in court decisions (Sudarto, 1981) It is not uncommon to find narcotics abusers with a relatively small amount of evidence still sentenced to prison, while in other cases perpetrators with similar conditions obtain rehabilitation sentences. This difference raises questions about the judge's standard of consideration and the extent to which such discretion is used proportionately and objectively.

Other problems are related to the process of proof and assessment. The law requires an integrated assessment to determine whether a defendant is really an addict or a victim of abuse (*Joint Regulation of the Minister of Health, Minister of Social Affairs, Attorney General, Chief of the Indonesian National Police, Head of BNN, and Minister of Law and Human Rights of the Republic of Indonesia Number: 12/MENKES/PB/I/2014, Number: PB 01 of 2014, Number: 01/A/JA/01/2014, Number: 1 of 2014, Number: 70 of 2014, Number: M.HH.11.OT.01.01 of 2014 concerning the Handling of Drug Addicts and Victims of Drug Abuse into Medical Rehabilitation and Social Rehabilitation Institutions, 2014*) However, in practice, the assessment process is often not optimal, either due to limited resources, coordination between institutions, and differences in interpretation between law enforcement officials. This condition has implications for the non-uniform basis of the judge's consideration in imposing a rehabilitation decision.

In addition, there is tension between the purpose of punishment which is retributive (retributive) and the purpose which is rehabilitative (Prasetyo, 2010) In the classical criminal law system, imprisonment is seen as the main means of providing a deterrent and retribution effect for unlawful acts. However, the development of modern criminal law theory emphasizes the importance of a more humanistic and recovery-oriented approach. In the context of narcotics abusers, a penal approach that is too repressive has the potential to worsen the condition of the perpetrator, because correctional institutions are often unable to provide adequate rehabilitation programs.

Empirical data show that most inmates in narcotics cases in correctional institutions are users or abusers, not large-scale traffickers (RI, 2023) This condition contributes to the overcapacity of correctional institutions, which ultimately hinders the effectiveness of coaching. On the other hand, targeted rehabilitation can help break the cycle of dependence and reduce recidivism rates. Therefore, the authority of judges in determining the form of sanctions is very crucial in determining the direction of policies to counter narcotics abuse.

From a human rights perspective, narcotics abusers who are in a state of dependence can be viewed as individuals in need of medical treatment. The public health approach places narcotics abuse as a health problem, not merely a criminal problem (Crime, 2022). In line with this principle, rehabilitation is a form of protection of the right to health as well as a form of substantive justice. Judges, as central actors in the judicial process, have a strategic role to ensure that the verdicts handed down not only meet formal legal aspects, but also reflect restorative-oriented justice.

However, the implementation of this authority is inseparable from normative and structural challenges. Normatively, there are multiple interpretations of the phrase "may" in the provisions of Article 103, which raises the debate whether rehabilitation is mandatory or facultative (*Supreme Court Circular Letter Number 4 of 2010 concerning the Placement of Drug Abuse, Addicts, and Victims of Drug Abuse*

into *Medical and Social Rehabilitation Institutions*, 2010). Structurally, the limited rehabilitation facilities and the uneven distribution of rehabilitation institutions in various regions also affect the effectiveness of the implementation of judges' decisions.

Another relevant issue is the social stigma against narcotics abusers. This stigma often affects the perception of law enforcement officials and the public, so abusers tend to be treated as pure criminals. In fact, an approach that is too stigmatized can hinder the process of social reintegration after undergoing rehabilitation. In this context, judges are required to be able to position themselves objectively, free from the pressure of public opinion, and adhere to the principle of independence of judicial power (Indonesia, 2009)

The urgency of research on the authority of judges in imposing rehabilitation decisions is getting stronger considering the complexity of the issues surrounding it. An in-depth study is needed on how the legal basis is implemented, how judges' considerations are formulated in decisions, and what factors affect the use of discretion. This research is also important to identify the obstacles faced in practice and formulate recommendations to improve the consistency and effectiveness of rehabilitation implementation.

Theoretically, this study is relevant in the framework of criminal law reform that places criminalization as a means of community protection as well as individual protection. The rehabilitative approach is in line with the relative theory and combined theory in criminal law, which emphasizes the function of prevention and rehabilitation of offenders (Lamintang, 2017) In the context of narcotics abusers, this goal can only be achieved if the judge optimally uses his authority to impose a rehabilitation decision based on comprehensive consideration.

Thus, the background of this problem departs from the gap between norms and practices, inconsistencies in court decisions, and the urgent need to optimize the authority of judges as a criminal law policy instrument oriented towards recovery. Research on the authority of judges in passing rehabilitation decisions for narcotics abusers is important to ensure that the criminal justice system functions not only as a tool of punishment, but also as a means of rehabilitation, protection of human rights, and the prevention of crime in an ongoing manner.

In addition, the judge in making decisions in the exercise of his authority does not necessarily have to consider personal interests, but rather to implement the law by receiving, examining, and deciding cases submitted based on the law (Indonesia, 2009)

The problem of narcotics abuse in the context of Indonesian criminal law cannot be separated from the dynamics of the development of criminal policy and penal policy which continue to undergo paradigm changes (Arief, 2010) From an academic perspective, the discourse on the authority of judges in issuing rehabilitation decisions for narcotics abusers is part of a broader debate about the function of punishment, the purpose of criminal law, and the orientation of the modern criminal justice system. On the other hand, from the perspective of legal practitioners, this issue is directly related to the reality of judicial practice, evidentiary challenges, structural pressures, and technical issues of implementing rehabilitation decisions in the field.

As stipulated in Law Number 35 of 2009 concerning Narcotics, especially Article 54, Article 103, and Article 127, the state has normatively provided a clear space for judges to impose rehabilitation decisions on addicts and victims of narcotics abuse. The provision reflects the recognition that narcotics abusers are in an ambivalent position: on the one hand as a criminal offender, but on the other hand as individuals who are dependent and in need of medical care and social rehabilitation. This ambivalence is what creates complexity in judicial practice.

2. METHODS

This research is a normative juridical legal research equipped with an empirical juridical approach (Ali, 2016) Normative legal research is focused on the study of principles, norms, rules, and synchronization of laws and regulations related to the authority of judges in imposing rehabilitation decisions (Ibrahim, 2006) Meanwhile, an empirical juridical approach is used to examine the

implementation of these norms in judicial practice, especially through the analysis of judges' decisions in district courts and high courts in Indonesia (Soekanto, 2014) The combination of these two approaches was chosen to bridge the gap between *das sollen* (what should be according to law) and *das sein* (what happens in practice) (Scott, 2017)

3. FINDINGS AND DISCUSSION

A. Normative Framework of Judges' Authority in Imposing Rehabilitation

The discussion of the judge's authority in imposing rehabilitation decisions for narcotics abusers must start from the normative framework that is the basis for the legitimacy of the action (Arief, 2013) Juridically, the regulation regarding rehabilitation is contained in Law Number 35 of 2009 concerning Narcotics, especially Article 54, Article 103, and Article 127. (Law Number 35 of 2009 concerning Narcotics, 2009) This provision affirms that addicts and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation (Law Number 35 of 2009 concerning Narcotics, 2009)

Article 54 states that narcotics addicts and victims of narcotics abuse are obliged to undergo medical rehabilitation and social rehabilitation. The word "mandatory" in this norm indicates the existence of an imperative order (Mertokusumo, 2010) However, Article 103 uses the phrase "may decide" which gives discretion to the judge to order rehabilitation. (Law Number 35 of 2009 concerning Narcotics, 2009) This editorial difference raises an interpretive debate: is rehabilitation mandatory or facultative? (*Supreme Court Circular Letter Number 4 of 2010 concerning the Placement of Drug Abuse, Addicts, and Victims of Drug Abuse into Medical and Social Rehabilitation Institutions*, 2010)

In practice, judges often interpret these provisions systematically and teleologically (Marzuki, 2017) Systematically, Article 54 and Article 103 must be read as a whole (Mertokusumo & Pitlo, 2010) Teleologically, the purpose of the law is to provide protection and rehabilitation for abusers, so rehabilitation should be the first option if the conditions are met (Arief, 2011)

In addition, the provisions of Article 127 regulate criminal threats for narcotics abusers for themselves, but paragraphs (2) and (3) open the possibility for judges to consider rehabilitation (Law Number 35 of 2009 concerning Narcotics, 2009) Thus, the norm shows the integration between the penal (criminal) and non-penal (rehabilitative) approaches (Muladi, 2002)

B. Theoretical Analysis: Objectives of Criminalization and Rehabilitation

1. Theory Absolute (Retributif)

The absolute theory views crime as retribution for the wrongdoing of the perpetrator. In the context of narcotics abuse, this approach will place the perpetrator as an individual who must receive appropriate punishment for his or her violation of the law. However, this theory lacks consideration of the aspect of dependence as a medical condition.

If absolute theory is applied strictly, narcotics abusers tend to be sentenced to prison without considering the need for rehabilitation. This can have implications for the perpetrator's goal of improvement.

2. Relative Theory (Utilitarian)

Relative theory emphasizes the functions of prevention (preventive) and remedial (reformative). In this perspective, rehabilitation is an effective means to prevent the recurrence of criminal acts. By treating dependence, the state can reduce the risk of recidivism.

Rehabilitation in the framework of theory relatively functions as a special prevention, namely preventing certain perpetrators from re-committing violations of the law.

3. Combination Theory

The combined theory integrates retaliation and prevention. In this context, judges can consider rehabilitation as a form of punishment that still contains an element of accountability, but is oriented towards improving the perpetrator.

Rehabilitation does not mean eliminating the criminal element, but changing the form of the state's response to violations of the law to be more proportionate.

C. Judge's Discretion and Standards of Consideration

The judge's authority in imposing rehabilitation is a form of judicial discretion. This discretion must be exercised on the principle of:

- a. Legality – The verdict must be in accordance with the provisions of the law.
- b. Proportionality – Sanctions should be balanced with the level of error.
- c. Substantive Justice – Paying attention to the concrete condition of the defendant.
- d. Legal Certainty – Avoids excessive inconsistencies.
- e. In practice, judges consider several factors, including:
- f. The amount and type of narcotics seized
- g. Integrated assessment results
- h. Usage history
- i. Role of the defendant (user or dealer)
- j. The attitude of the defendant at the trial

Analysis of court decisions shows that the results of integrated assessments are often the dominant factor in determining rehabilitation

D. Public Health Approach

In the development of global narcotics policy, there has been a shift from a repressive approach to a public health approach. Narcotics abuse is seen as a health disorder that requires medical intervention.

Medical rehabilitation aims to overcome dependence physically and psychologically. Social rehabilitation aims to restore the social function of individuals so that they can reintegrate into society.

Judges, in this context, play the role of decision-makers who connect the justice system with the health system.

E. Implementation Challenges in the Field

1. Inconsistency of the Verdict
Differences in interpretation of norms lead to variations in verdicts. This can reduce public trust in the justice system.
2. Limitations of Rehabilitation Facilities
Not all areas have adequate rehabilitation facilities. This affects the effectiveness of the implementation of the judge's decision.
3. Overcapacity of Correctional Institutions
Many inmates in narcotics cases are users. Rehabilitation can be a solution to reduce the overcrowding of correctional institutions.

F. Restorative Justice Analysis

Although narcotics cases do not always have direct victims, restorative approaches remain relevant. Rehabilitation functions to recover the perpetrator and reduce the social impact of abuse.

In this context, judges must consider the balance between the protection of society and the rights of individuals.

G. Protection of Human Rights

Rehabilitation is in line with the right to health and the principle of non-discrimination. Imposing prison sentences without treatment for heavy addicts can be considered a disregard for the right to health.

Judges have a moral and legal responsibility to ensure that verdicts do not violate human rights principles.

H. Empirical Analysis of Court Decisions

- a. An analysis of some of the results shows that:
- b. Rehabilitation is more often given to defendants with small evidence.
- c. Defendants who have a history of strong dependency have a better chance of obtaining rehabilitation.
- d. The assessment recommendation factor is very decisive.

However, there are still decisions that impose prison sentences even though the rehabilitation conditions are met.

I. Policy Reformulation

To improve consistency, it is necessary:

- a. Clearer technical guidelines.
- b. Increasing the capacity of judges and law enforcement officials.
- c. Strengthening of an integrated assessment system.
- d. Provision of adequate rehabilitation facilities.

J. Discussion Synthesis

From the description above, it can be concluded that the authority of judges in imposing rehabilitation is an important instrument in the policy of narcotics criminal law. Normatively, the legal basis is available. Theoretically, rehabilitation is in line with relative and combined theory. Practically, there are still implementation challenges that require systemic improvement.

Judges not only play the role of law enforcers, but also as guardians of the balance between legal certainty, utility, and justice. Optimizing the authority of rehabilitation will contribute to reducing recidivism, protecting human rights, and the effectiveness of the criminal justice system as a whole.

4. CONCLUSION

Based on all descriptions of the judge's authority in imposing rehabilitation decisions for narcotics abusers, both from normative, theoretical, and practical aspects, a number of comprehensive conclusions can be drawn that affirm the strategic position of judges in determining the direction of narcotics criminal law policy in Indonesia.

First, normatively, the judge's authority in imposing rehabilitation decisions has a clear and firm legal basis in Law Number 35 of 2009 concerning Narcotics, especially in Article 54, Article 103, and Article 127. This provision shows that the lawmakers have recognized the dual position of narcotics abusers, namely as perpetrators of criminal acts as well as victims of abuse that require medical and social treatment. Thus, rehabilitation is not a form of unfounded leniency, but a legal instrument that is valid and integral in the narcotics criminal justice system. This norm reflects the integration between the penal approach and the public health approach in dealing with narcotics problems.

Second, conceptually and theoretically, rehabilitation is in line with the development of modern criminal purpose theory. If absolute (retributive) theory focuses on retribution, then relative (utilitarian) theory and combined theory provide a wider space for remedial and preventive approaches. Rehabilitation as a form of state response to narcotics abusers reflects the orientation to special prevention, which is an effort to prevent perpetrators from repeating their actions through the restoration of physical, psychological, and social conditions. Thus, the authority of judges in imposing rehabilitation is not only a technical issue of procedural law, but also a reflection of a more humane and progressive criminal paradigm.

Third, the discretion of judges in imposing rehabilitation is part of the independence of judicial power. However, this discretion is not absolute. Judges remain bound by the principles of legality, the principle of proportionality, the principle of justice, and the principle of legal certainty. In practice, the judge considers various factors such as the results of an integrated assessment, the amount and type of evidence, the role of the defendant in the crime, the history of dependence, and the defendant's attitude at trial. Therefore, rehabilitation can only be imposed if the defendant is proven to be an abuser or addict and is not involved in the illicit narcotics trafficking network. These considerations must be stated argumentatively in the *ratio decidendi* so that the decision has strong legitimacy.

Fourth, from the perspective of human rights protection, rehabilitation is a form of respect for the right to health and the right to humane treatment. Narcotics abusers who are in a state of heavy dependence actually require medical intervention, not mere punishment. Prison sentences without rehabilitation have the potential to worsen the psychological and social condition of the perpetrator and increase the risk of recidivism. Therefore, the judge's authority in imposing rehabilitation has a significant constitutional and moral dimension in realizing substantive justice.

Fifth, empirically, the implementation of rehabilitation authority still faces various challenges. The inconsistency of the decision between one court and another shows that there is a difference in interpretation of the same norm. In addition, the limited rehabilitation facilities, the lack of optimal implementation of integrated assessments, and the pressure of public opinion on the handling of narcotics cases also affect judicial practices. This condition creates a gap between the ideal norm and the reality of its implementation.

Sixth, the existence of rehabilitation as an alternative to punishment also has systemic implications for correctional institutions. The high number of inmates in narcotics cases, most of whom are users, contributes to the overcapacity of correctional institutions. Rehabilitation that is implemented consistently and on target can be a strategic solution to reduce the burden on correctional institutions while increasing the effectiveness of coaching. Thus, the optimization of judges' authority in imposing rehabilitation contributes to the reform of the criminal justice system as a whole.

Seventh, the rehabilitative approach in narcotics cases also reflects the application of restorative justice principles in a broader context. Although it does not always involve individual victims directly, narcotics abuse has an impact on families and communities. Rehabilitation aims to recover the perpetrator so that he can return to function socially and productively. In this case, judges act as a balancer between the interests of community protection and the rights of individual perpetrators.

Eighth, optimizing the authority of judges requires systemic support in the form of clear technical guidelines, capacity building of law enforcement officials, strengthening integrated assessment mechanisms, and providing adequate and equitable rehabilitation facilities. Without this support, rehabilitation has the potential to become just a declarative norm with no real effectiveness.

Ninth, from the point of view of criminal policy, rehabilitation is part of a non-penal strategy that complements the penal approach. Countermeasures for narcotics abuse cannot rely solely on punishment, but must include prevention, education, and treatment. Judges as part of the justice system have the responsibility to ensure that criminal law policies are applied proportionately and oriented towards long-term goals.

Tenth, as a whole, it can be affirmed that the authority of judges in imposing rehabilitation decisions for narcotics abusers is an important instrument in realizing a fair, humane, and effective

criminal justice system. Rehabilitation is not a form of weakening law enforcement, but a more rational and recovery-oriented form of response. Judges not only act as a mouthpiece of the law, but also as guardians of substantive justice values that consider legal certainty, utility, and justice in a balanced manner.

Thus, the success of the implementation of rehabilitation depends heavily on the integrity, professionalism, and social sensitivity of judges in exercising their discretion. The optimization of this authority will have a positive impact not only on individual abusers, but also on society and the state in an effort to overcome the narcotics problem comprehensively and sustainably.

As a follow-up affirmation of the overall discussion of the authority of judges in imposing rehabilitation decisions for narcotics abusers, it can be understood that this issue does not only touch the juridical technical realm, but is also closely related to the direction of national legal development, the philosophy of punishment, and the state's commitment to placing the law as an instrument of protection and community development. The existence of rehabilitation norms in Law Number 35 of 2009 concerning Narcotics marks an important transformation in Indonesia's criminal law policy, namely a shift from a predominantly repressive approach to a more integrative and humanistic approach.

In a philosophical framework, criminal law is essentially not only aimed at punishing, but also protecting and correcting. Community protection is not always synonymous with prison sentences. In the context of narcotics abusers, protection can actually be achieved more effectively through rehabilitation that is able to break the chain of dependence. Therefore, the judge's authority in imposing rehabilitation reflects the application of the principle of *ultimum remedium*, where imprisonment is placed as a last resort if the recovery mechanism is inadequate or if the perpetrator is proven to have a more serious role in the illicit circulation of narcotics.

From a sociological point of view, narcotics abuse is a complex phenomenon influenced by social, economic, psychological, and environmental factors. Many abusers are in vulnerable situations, such as social pressure, family problems, or difficult economic conditions. The imposition of prison sentences without rehabilitation often does not touch the root of the problem. Instead, rehabilitation provides space for comprehensive interventions, including counseling, therapy, and social coaching, aimed at restoring the individual's full functioning in society. In this case, judges play a strategic role as actors who can determine whether the justice system will contribute to the resolution of problems or worsen them.

Furthermore, institutionally, the authority of rehabilitation also contributes to the reform of the correctional system. The overcapacity of correctional institutions, which are mostly filled by perpetrators of narcotics crimes, shows the need for an alternative approach. Rehabilitation imposed through a judge's decision can be an effective mechanism to reduce prison overcrowding while improving the quality of coaching for inmates who do need prison sentences. Thus, the proportionate use of rehabilitation is not only beneficial to the individual perpetrator, but also to the criminal justice system as a whole.

From a public policy perspective, rehabilitation reflects the synergy between the legal sector and the health sector. Narcotics dependence is recognized as a health disorder that requires medical treatment. When a judge makes a rehabilitation decision, he is essentially integrating health policy into criminal policy. This integration shows that modern law enforcement cannot run sectorally, but rather requires cross-institutional coordination. Therefore, the effectiveness of judges' authority is highly dependent on the availability of rehabilitation facilities, the quality of medical personnel, and consistent government policy support.

In the context of legal certainty, a more uniform standard is needed so that there is no significant disparity in verdicts. Excessive disparities can lead to perceptions of injustice and undermine public trust in the judiciary. Therefore, although the discretion of judges is part of the independence of judicial power, its use must remain within the corridor of the principles of objectivity, rationality, and

transparency. The drafting of consistent guidelines or jurisprudence can be a strategic step to minimize unfounded differences in interpretation.

In addition, it is important to emphasize that rehabilitation is not a form of impunity or the elimination of criminal responsibility. Rehabilitation remains a part of the legal process that has consequences and supervision. The implementation of rehabilitation is carried out within a certain period of time and is under the supervision of the authorized institution. Thus, rehabilitation still contains elements of social coaching and control, although it is not in the form of imprisonment. This understanding needs to be socialized to the community so that there is no misunderstanding that rehabilitation means liberation without consequences.

In the long run, the success of the implementation of rehabilitation as part of the judge's authority will be largely determined by the quality of human resources of law enforcement officials. The judge needs to have a comprehensive understanding of the medical and psychological aspects of narcotics dependence, so that they can objectively assess the results of the assessment and the defendant's condition. Ongoing education and training for judges and other law enforcement officials is an urgent need to ensure that these powers are used appropriately and professionally.

Finally, it can be emphasized that the judge's authority in imposing rehabilitation decisions is a reflection of the state's commitment to balancing legal certainty, utility, and justice. This authority places the judge as a central figure who not only applies norms textually, but also interprets and actualizes them in accordance with human values and the goals of modern criminal law. By optimizing the implementation of rehabilitation, Indonesia's criminal justice system is expected to be able to transform to be more responsive, fair, and effective in dealing with the complexity of narcotics problems.

Thus, this overall conclusion emphasizes that rehabilitation as a form of judge's decision is not just an alternative to punishment, but a strategic instrument in the reform of national criminal law. Its success depends on the integrity of judges, institutional support, policy consistency, and community participation in understanding that tackling narcotics abuse requires a comprehensive and sustainable approach.

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