

RELIGIOUS TOLERANCE: DOES INDONESIAN LAW REALLY GUARANTEE IT?

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Legal protection given by the state of Indonesia to the followers of religion as has been stated in the first principle of Pancasila the divinity of the Almighty, in which the state of Indonesia, although not a country based on a particular religions but the state of Indonesia is a religious country, so that every adherent of religion guaranteed their rights and legally protected from all actions that harm the adherents of that religion. Legal protection has been contained in the 1945 Constitution of the State of the Republic of Indonesia in Article 28 E, 28 J and Article 29. The rights and freedom of religion may be limited to its fulfillment if it has the potential to interfere and interfere with the rights and freedoms of others. This is in accordance with the principle of harm-principle proposed by Jhon Stuart Mill and the view of Asma Jahangir who argued that the concept of restriction of religious freedom is only at the level of the external forum.

Keywords: *Legal Protection; Religion; Freedom*

I. INTRODUCTION

The term toleration comes from Latin, "*tolerare*" which means being patient with something.¹ Based on the Indonesian General Dictionary,

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¹ Abu Bakar, "Konsep Toleransi dan Kebebasan Beragama". *Toleransi: Media Ilmiah Komunikasi Umat Beragama*, 7(2), 2016, pp. 123-131.

tolerance derived from the word "*tolerant*" means the nature or pause (enjoyment, allow, allow), different (and, custom, and so on) positions and or contrary to its placement. Tolerance also means a limit for measuring or enabling what is still in use. In Arabic, it is commonly called "*ikhtimal, tasamuh*" which means the attitude of caring for the breasts (*samuha-yasmuha-samhan, wasimaahan, wasamaahan*) means: generous, charitable. Thus, religious (*tasamuh*) burden is a patient notification, other people or others. So, tolerance is a rule-like or human behaviour, in which one can appreciate, respect others.²

The legal basis ensuring the freedom of religion in Indonesia lies in our Constitution, namely Article 28E Paragraph (1) of the 1945 Constitution (UUD 1945): "*Everyone is free to embrace religion and worship according to his religion, choose education and questions, choose a job, choose citizenship, choose a place to live in the country and off, and also come back.*"³

Human rights are a set of rights inherent in human nature and existence as a creature of God Almighty and is a gift that must be respected, upheld and protected by the state, law, government, and everyone for the honor and protection of human dignity and prestige.⁴

Article 28E Paragraph (2) of the 1945 Constitution also states that everyone is entitled to freedom of belief. In addition, Article 28I Paragraph (1) of the 1945 Constitution is also recognized that the right to religion is a human right. Subsequently Article 29 Paragraph (2) of the 1945 Constitution also states that the State guarantees the independence of every citizen to embrace the religion.

This research uses qualitative research type. Qualitative research is a research that produces descriptive data in the form of written words or from people's oral or behaviour that can be observed. This approach is directed to the background and the individual holistically and does not use the hypothesis (non hypothesis) so that in this study does not need to formulate the hypothesis. Researchers emphasize to clarify about a phenomenon that occurs or social reality by way of decrypt a number of variables related to the problem and the unit under study.⁵

The location of the research was conducted at Universitas Negeri Semarang in the selection of this location, among others: (a) Faculty of Law. The data required for this study is data related to how people's views

² *Ibid.*

³ *Undang-Undang Dasar Negara Republik Indonesia Tahun 1945*

⁴ Article 1(1), *Undang-Undang Nomor 39 Tahun 1999 Tentang Hak Asasi Manusia*. For further discussion, see also, Arifin, R., Helmi, H., Nte, N. D., Waspihah, W., & Latifiani, D. (2021). The adversity on establishing places of worship: has religious freedom failed in Indonesia?. *Legality: Jurnal Ilmiah Hukum*, 29(1), 93-113; Rotaru, I. G. (2017). Freedom of Religion, Always a Hot Issue. *Jurnalul Libertății de Conștiință*, 5(1), 545-550.

⁵ Suharsimi Arikunto, *Prosedur Penelitian Suatu Pendekatan Praktek*. Jakarta: Rineka Cipta, 1998.

on pluralism and how society keeps its harmony in a social environment. To explore the completeness of the data, then the necessary data sources as follows: (a) Primary Data Source; the subject of research used as research information using measurement tools and data retrieval directly or known by the term interview or interview and make observations.⁶ (b) Secondary Data Sources data taken indirectly from the data source. Secondary data in this study were obtained through documentation study, data from village hall, internet, literature and other document related to research.

II. LEGAL PROTECTION AGAINST THE DIFFERENCES BETWEEN RELIGIOUS AND BELIEF IN INDONESIA

The State has an obligation to be responsible for its citizens. The State of Indonesia is a State of law that upholds the human rights of every individual. The freedom to choose religion and belief is the right of every individual. The Government has an obligation to protect the right of citizens to choose their religion and belief without discrimination. Citizens are also required to choose one of the five religions recognized by the State of Indonesia. But outside the religion recognized by the State of Indonesia, there are beliefs held by some Indonesian citizens. In this case, there are pros and cons of human rights in which some people rein in the existence of trust outside the recognized religion. Some people think these beliefs can be misleading and only bad for the State of Indonesia. On the other hand, the State of Indonesia has guaranteed freedom of religion for every citizen as stipulated in Article 28E paragraph 1 of the 1945 Constitution. The inter-religious community recognized by the State even Indonesia often encounters debates up to the war that only harms each other.⁷

Hazairin commented on Article 29 Paragraph (1) of the 1945 Constitution: "... (1) *In the State of the Republic of Indonesia there shall be no occurrence or effect of anything contrary to Islamic norms for Muslims or shall not be contrary to the Christian norms for Christians, and so on .. (2) The State of RI is obliged to implement Islamic Shari'ah for Muslims, Shari'at Christian for Christians, Shari'ah Buddhists for Buddhists, Hindu Shari'ah for Hindus. (3) a shari'a which does not require the assistance of state power to exercise and therefore can be itself exercised by the religious adherents concerned, becomes a personal*

⁶ Sifuddin Azwan, *Metode Penelitian*. Yogyakarta: Pustaka Pelajar. 2007

⁷ Widayati, S., & Maulidiyah, E. C. (2018, December). Religious Tolerance in Indonesia. In *Proceedings of the 2nd International Conference on Education Innovation (ICEI 2018)* (Vol. 212, pp. 685-688).

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duty to God for each person, which he exercises according to his own religion respectively".⁸

Protection against religion is also reinforced by the UN Resolution on blasphemy. Religious blasphemy violated human rights. Quoted from the Official Site of the Coordinating Ministry for People's Welfare. All of the above are issues relating to believers, and there is a need for in-depth study of the involvement of the state to provide legal protection to religious believers so that the conflicts in the field of religion can be minimized and can be resolved properly.

III. RELIGIOUS TOLERANCE IN HUMAN RIGHTS PERSPECTIVE

Human rights are a constitutional right because of their higher status in the hierarchy of ordinary legal norms, primarily placed in a constitution or constitution. This means discussing the normative framework and the conception of constitutional rights is actually not much different from talking about human rights.

One of the problems faced by the Indonesian nation is the Conflict of national integration, law enforcement and human rights. One of the basic human rights that can not be reduced under any circumstances is the right of religion, even everyone is free to choose religion and worship according to their religion. The State guarantees freedom of religion, while the government is obliged to protect the population in the practice of religion and worship, as long as it is not contrary to the laws and regulations, does not abuse or stain religion, and does not disturb public peace and order. The task of the government should provide guidance and service so that every citizen in carrying out his religious teachings can take place in harmony, smooth and orderly both internally and inter-religious.⁹

Related to tolerance, religious harmony and rejection of terrorism, Indonesian Muslims as represented by Islamic mass organizations (Muhammadiyah, NU, Persis, Al-Irsyad, and others) have a clear attitude. Indonesian Muslims support tolerance, condemn terrorism, develop social virtues, and be active in women's empowerment

⁸ Suparman Usman, *Hukum Islam*. Jakarta: Gaya Media Prata. 2001.

⁹ A. Hamdan, *Kerukunan Umat Beragama*, 2000, <https://e-dokumen.kemenag.go.id/files/qZz5cYJw1308803027.pdf>. See also Aditya, Z. F., & Al-Fatih, S. (2017). State Liability for Violation of Constitutional Rights Against Indigenous People in Freedom of Religion and Belief. *Brawijaya Law Journal*, 4(1), 29-58; Ake, M. (2019). Kehidupan Toleransi Beragama Disekolah. *Jambura Early Childhood Education Journal*, 1(2), 46-54.

programs and poverty alleviation through the organizational units below them.¹⁰

Therefore, seeing Indonesian Muslims should be separated from their government policies. If there are human rights violations committed by the state, then not automatically by Muslims. If there is violence done by unscrupulous Muslims, not automatically by Islam. This separation is necessary so that everything that is not in accordance with the teachings of Islam is considered as the teachings of Islam itself.

The Indonesian Muslims' attitude towards human rights principles is final and conclusive. The difference lies in the details and implementation methods. Therefore, cooperation and dialogue on how to uphold human rights continue to take into account the specific aspects of each concept of religious teachings. Religious difference is a real phenomenon that exists in life, therefore tolerance is needed.

Everyone knows that Islam is the most religiously tolerant religion. A person is never forced into Islam, if he does not want to. In history has never happened, there is someone converted to Islam because of being forced, threatened or intimidated. Because in the view of Islam, everyone must be respected *kebebasanya* in determining the way of life.

IV. LEGAL PROTECTION PROVIDED BY THE STATE TO RELIGIOUS PERSONS IN INDONESIA

Legal Protection is to provide guidance to human rights harmed by others and the protection is given to the community so that they may enjoy all the rights granted by law or in other words the protection of the law is the various legal remedies which must be provided by law enforcement officers to provide a sense of security, both in mind and physically from disturbances and threats from any party.¹¹

A State of Law must have the absolute character or condition that it protects and guarantees the human rights of every citizen, for example one of the rights is the right of religion. Besides, one of the objectives of a legal state is to obtain the highest legal certainty (*rechtzekerheid*) for its citizens. Legal certainty is becoming increasingly important when it is associated with state law-based doctrine. It has become a classical knowledge in jurisprudence that written law is seen as more assured of legal certainty than the unwritten law.¹²

¹⁰ Ake, M. (2019). Kehidupan Toleransi Beragama di Sekolah. *Jambura Early Childhood Education Journal*, 1(2), 46-54.

¹¹ Satjipto Raharjo, Ilmu Hukum. Bandung: Citra Aditya Bhakti, 2000.

¹² Zahratul Idami, "Perlindungan Hukum oleh Negara Kepada Pemeluk Agama di Indonesia dan Perbandingannya dengan Ketentuan dalam Islam". *Kanun Jurnal*

According to Jimly As-shiddiqie, the state, under any circumstances, can not diminish the right of everyone to life, the right not to be tortured, the right of freedom of thought and conscience, the right to religion, the right not to be enslaved, the right to be recognized personally before the law, and the right not to be prosecuted on the basis of retroactive law. According to him, a country that guarantees human rights (one of them religious rights), then Everyone is free to embrace religion and worship according to his religion. Everyone has the right to freedom to believe in beliefs, to express thoughts and attitudes, in accordance with his conscience. Therefore the state upholds the ethical and moral values of humanity taught by every religion, and guarantees the independence of every citizen to embrace and live his religious teachings. The protection, promotion, enforcement, and fulfillment of Human Rights are the responsibility of the State.¹³

Respect is a negative obligation, that all parties must not perform various actions that can have implications for unfulfilled religious rights. Protecting in the sense that every citizen is protected by his rights so as not to be disturbed by others. The government, for example, can issue laws to prevent violations against religious communities. Fulfilling is a positive obligation, that all parties should participate in creating a political, legal, economic and social system that allows religious persons to access their rights.

In addition, all religious people should also contribute to the protection of the rights of other religious communities by trying to practice global ethics declared in the Parliament of the World Religions in Chicago, USA, August 28 - September 4, 1993. One of the ethical principles global is a culture of nonviolence and respect for all life. Thus, all religious people are urged to protect life by promoting the often neglected values of humanity.¹⁴

V. RESTRICTIONS ON FREEDOM OF RELIGION: A HUMAN RIGHTS APPROACH

The provision of Article 29 Paragraph (2) stipulates that *"in exercising their rights and freedoms, everyone shall be subject only to the restrictions laid down by law whose purpose is solely to secure the recognition and proper respect for the rights, rights and freedoms of others, and to fulfill fair conditions in matters of morality, public order*

Ilmu Hukum, 18(1), 2016, pp. 69-92.

¹³ Jimly Asshiddiqie, *Demokrasi dan Hak Asasi Manusia*, Mahkamah Konstitusi. Jakarta.2005.

¹⁴ ST Sunardi, *Keselamatan Kapitalisme Kekerasan*, LKIS, Yogyakarta, 1996.

and welfare in a democratic society". This article affirms that freedom of religion and belief is not given in absolute absence of boundary ramburambu. In that sense, the rights and freedoms can be limited when it comes to the rights of others.

In line with the above provisions, Jhon Stuart Mill put forward his idea of "*harm-principle*". This idea provides assertion that an individual is free to act as he pleases as long as he does not interfere with the rights of others with his actions. That is, freedom is not given without limitation in the implementation. Freedom is stopped when there is an intersection with the rights of others. The intersection undoubtedly limits one's freedom to avoid disturbing or harming the rights and freedoms of others.¹⁵

The peculiarity and importance of religious freedom, many assume that religious freedom is merely a sublimation in human rights more broadly. This assumption is true because freedom of religion is a bound part of a bunch of other basic commodities of freedom. However, the statement is denied by an interesting case. Religious freedom is not only a derivation of civil and political rights, but rather an independent right that forms the foundation of other rights in society. When freedom of religion becomes the right of everyone, then other freedoms will follow behind.

In line with what Jhon Stuart Mill has, Jhon Rawls gives his view that freedom is the ultimate right and all other rights are his pekungkapanya. Freedom can only and may be limited by freedom itself, ie only if: First, it will strengthen the entire system of freedom enjoyed by all; and second, to ensure that the same freedoms or different fundamental freedoms are well protected. In a contrario, there should be no restrictions other than those two things. According to this theory, the rights and freedom of a person's religion may be limited to the purpose of ensuring the right to the freedom of religion of another person or of a right different from another to be fulfilled. In other words, freedom of religion can be limited by freedom of religion itself, as well as basic freedom that is different from others.¹⁶

If the provision of restrictions on religious freedom as described by experts is applied to the realm of the Sunnisyah conflict that occurred in Sampang. So the more likely to be implemented is the provision of

¹⁵ Mill, J. S. (1961). *The Philosophy of John Stuart Mill: Ethical, Political, and Religious*. New York: Modern Library. See also Habermas, J. (2004). *Religious Tolerance—The Pacemaker for Cultural Rights*. *Philosophy*, 79(1), 5-18.

¹⁶ Mill, J. S. (1961). *The Philosophy of John Stuart Mill: Ethical, Political, and Religious*. New York: Modern Library. For comprehensive reading and discussion, please also compare to Nurlina, N., & Busro, B. (2021, April). *The Concept of Religious Tolerance in Indonesia According to Buya Hamka in Tafsir Al-Azhar*. In *Gunung Djati Conference Series* (Vol. 4, pp. 467-479); Newman, J. (2019). *Foundations of Religious Tolerance*. Toronto: University of Toronto Press.

restrictions on the external forum of freedom of association. This is based on the fact that the majority of the population in the Nang-Krenang Hamlet is a devout adherent of Sunni teachings who inherited his ancestors. Of course, just like the character of Madurese in general, who is easily offended and reacts easily when there is an intersection of religion, the problem of the existence of Shia teachings will be a very great contradiction. Therefore, there is a need for clear rules on restrictions that can be exercised on external forums.¹⁷

Another example is the limitation on the actions of the religious group Hizbut Tahrir Indonesia (HTI), which carries a radical understanding of the concept of the state should be implemented in full based on Islamic sharia. The concept of radical Islamic ideology like this may be believed and believed as a consequence of the freedom of everyone for religion and belief. However, it becomes a problem when the manifestation of faith when in a public domain where this understanding assumes imperfection of a person's Islamic if not enforce *Khilafah* state.¹⁸ This doctrine if preached in public audiences on the grounds of freedom to convey the teachings of religion will actually create chaos and interrelations between religious people and the abrogation of the right of others to be free to embrace religion without insults and condemnation from other religions or denominations. So, for the sake of ensuring the right of the community from the intersection and chaos due to the practice of the manifestation of religious teachings (external freedom), then should such actions must be limited by the state. Because if left open, it would threaten the existence of Indonesia as a democratic and plural state.

VI. THE GOVERNMENT'S ROLE ON THE FREEDOM OF RELIGION RIGHTS

Pluralism comes from plural and ism, plural which means many (*plural*), while isme means understanding. So, pluralismee is a concept or theory that assumes that reality consists of many substances.¹⁹ Plural essentially shows more than one and isme is something related to understand or flow.

¹⁷ Muwaffiq Jufri, "Pembatasan terhadap Hak dan Kebebasan Beragama di Indonesia". *Jurnal Ilmiah Pendidikan Pancasila dan Kewarganegaraan*, 1(1), 2016, pp. 40-47.

¹⁸ Please also see, Arifin, R., Masyhar, A., & Amira, B. (2020). The Invisible Big Waves: How Indonesia Combat with Radicalism and Terrorism in Global Perspective. *HIKMATUNA*, 6(1), 105-121; Arifin, R., & Utama, M. A. R. (2020). Future Impact of the ASEAN-Russia Law Declaration to the International Terrorism: Can We Combat Terrorist Without War?. *Russian Law Journal*, 8(2), 4-27.

¹⁹ Pius A. P & M. Dahlan 1994, *Kamus Ilmiah Populer*. Surabaya: Arkola; Nasution, S. 1996. *Metode Research*. Bandung: Bumi Askara.

Thus pluralism is the understanding or attitude toward multiple situations or many in all things including social, cultural, political and religious. Religious pluralism can be understood in three points of view; *First*, social that all religions are entitled to exist and live, meaning all religious people alike learn to be tolerant, and respect the faith or belief of every adherent of religion. *Second*, ethics or morals that all religious people see that the moral or ethics of each religion is relative and legitimate when religious people embrace religious pluralism in ethical nuances, it is encouraged not to judge other believers. *Thirdly*, the philosophical theology of religions is essentially equal, equally true and equally saving means all religions leading to the One Supreme Godhead.²⁰

Therefore, what religious pluralism means is an understanding that all religions have the existence of mutual co-existence, mutual cooperation and interaction between one religion with another. Later in political science gave birth to the science of sovereignty, first understood the theocracy of sovereignty in the hands of God, the two concepts of democracy namely that sovereignty in the hands of society or people, the three theo-democracy, this theory wants to combine with the above theory. This means that although the management in the country is in the hands of the people, but the people can not be separated from the divine values. And the further consequence of the worldview is that the source of legitimacy, reference and religious references that contain universal humanitarian moral messages should be the basis of principles for all mind, concept, interpretation, interpretation, struggle, work and all human activities in the world. So pluralism is a worldview or a frame of mind for harmonizing lifestyles and balancing the meaning of social values in a plural society and upholding the value of religious differences.²¹

Furthermore, based on the Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs No. 9 of 2006 / No. 8 of 2006, the maintenance of religious harmony is the joint responsibility of religious communities, local government and central government. Thus the government has a strategic role in maintaining tolerance within religious communities. This sub-section discusses how the government's role of maintaining harmony among religious believers through 11 indicators. In general, based on the respondents' answers there are 3 main categories of answers categories that are located have the highest frequency in the categories agree, neutral and disagree which will be explained further as follows:²²

²⁰ Digdoyo, E. (2018). Kajian Isu Toleransi Beragama, Budaya, dan Tanggung Jawab Sosial Media. *JPK (Jurnal Pancasila dan Kewarganegaraan)*, 3(1), 42-59.

²¹ Muhammad Husaen, Mengaji Pluralisme. Bandung: Pustaka Nuansa, 2011.

²² Rina Hermawati, Caroline Paskarina, and Nunung Runiawati. "Toleransi antar umat beragama di Kota Bandung." *Umbara: Journal of Anthropology*, 1(2), 2017, pp. 105-124.

- a. The answer has the highest frequency in the category agreed to show that the government's attitude is considered good in maintaining inter-religious relations. As for several attitudes of the government in question are as follows:
 1. The government facilitated the construction of facilities of worship well (42.1%).
 2. The government facilitates the activities of religious activities in Bandung City Government well (29.6%)
 3. Governments often conduct activities involving various religions (34.3%)
 4. The government is firm in dealing with cases of religious blasphemy (38.9%)
 5. The government is firm in addressing cases of inter-religious violence (42.1%)
 6. The government protects the freedom of worship of every adherent of religion (41.2%)
 7. The government is firm in dealing with cases of deviance of religious teachings (45.8%)
- b. The answer has the highest frequency in the neutral category on all three indicators below:
 1. The current licensing procedure of the current place of worship has guaranteed the same right for every religion to build its synagogue (34.7%).
 2. The current licensing procedure for the construction of worship places is consistently applied to every religion (33.8%).
 3. The government facilitates good interfaith dialogue (37.5%).

Based on the Joint Regulation of the Minister of Religious Affairs and Minister of Home Affairs No. 9 of 2006 / No. 8 of 2006, there are administrative requirements, technical requirements and special requirements that must be taken by the community in the establishment of houses of worship.²³ Respondents declared neutral on consistent licensing procedures and guaranteed equal rights for each religion in building government houses of worship. In a constitutional perspective, licensing is one form of control and is an exception to a prohibition. Therefore, the existing procedures must be consistently applied so as to guarantee equal rights for every citizen.

The answer has the highest frequency in the category of not agreeing on the indicator of socialization activities undertaken by the government. The government is considered not to socialize the rules of establishment of means of worship well. Socialization is needed in order to cultivate harmony, mutual understanding, mutual respect and mutual trust among religious people. Therefore, in the future, this socialization activity needs to be improved.

²³ Jamaludin, A. N. (2018). Konflik dan Integrasi Pendirian Rumah Ibadah di Kota Bekasi. *Jurnal Socio-Politica*, 8(2), 227-238.

VII. CONCLUSION

This research concluded that Pancasila society's view of pluralism acceptance of Pancasila as the basis of state and ideology has a logical consequence that Pancasila values are the basic foundation, the foundation for the implementation of the state of Indonesia. The meaning of divine value in the first principle of Pancasila also means the recognition of freedom of religion, respect for religious freedom, and non-discriminatory among religious people. Pancasila Pancasila means making the values of Pancasila into values that live and implemented in everyday life. Internalization of Pancasila values can also be through formal and non-formal education (community). At the level of formal education, it is necessary to revitalize the subjects of civic education, as well as religious education.

Legal protection given by the state of Indonesia to the followers of religion as has been stated in the first principle of Pancasila the divinity of the Almighty, in which the state of Indonesia, although not a country based on a particular religion but the state of Indonesia is a religious country, so that every adherent of religion guaranteed their rights and legally protected from all actions that harm the adherents of that religion. Legal protection has been contained in the 1945 Constitution of the State of the Republic of Indonesia in Article 28 E, 28 J and Article 29. The rights and freedom of religion may be limited to its fulfillment if it has the potential to interfere and interfere with the rights and freedoms of others. This is in accordance with the principle of harm-principle proposed by Jhon Stuart Mill and the view of Asma Jahangir who argued that the concept of restriction of religious freedom is only at the level of the external forum.

However, religious tolerance according to Islam is not for mutual dissolution. It is not for mutual exchange between the different religious groups. Tolerance here is in the sense of mu'amalah (social interaction). Thus, there are boundaries that can and can not be breached. This is the essence of tolerance in which each party is to control itself and provide space to mutual respect for their uniqueness without feeling threatened with their beliefs or their rights

VIII. RECOMMENDATION

We as human beings and as religious people have the right to freedom to embrace their respective religions and beliefs. For that we should respect each other and tolerate with fellow religious people. The state has guaranteed freedom of religion, therefore we as good citizens have an obligation to love their fellow human beings whatever their religion.

Change the view that the difference makes us stay away from even hate others. The difference will be the unifying of this nation, because without distinction this nation will not advance. Shari'ah has ensured that there is no compulsion in religion. Since the imposition of the will of others to follow our religion is a historical, non-existent, and example example in early Islamic history. Precisely with this wonderful tolerant attitude, the history of Islamic civilization has resulted in the glory of being recorded in gold in gold by the history of world civilization to this day and insyaallah in the future.

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