The protection of human rights (HAM) in the constitution of the republic of Indonesia and the challenges in its enforcement

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Abstract

Indonesia is a country that respects and protects human rights. Normatively, human rights in Indonesia are regulated in the 1945 Constitution, specifically in Articles 28A to 28J of the 1945 Constitution, as well as in Law Number 39 of 1999 on Human Rights. Institutions related to the enforcement of human rights have also been established, such as the Human Rights Court as regulated in Law Number 26 of 2000 on the Human Rights Court, and the National Commission on Human Rights (Komnas HAM), which was established based on Presidential Decree Number 50 of 1993. However, serious and grave human rights violations continue to occur in Indonesia. The law enforcement on human rights violations in Indonesia is deeply concerning and has not shown significant progress, as many cases of human rights violations in Indonesia remain unresolved. Despite ongoing efforts to enforce human rights in Indonesia, there are several obstacles that need to be overcome. The following are some
common obstacles in the process of human rights enforcement in Indonesia: lack of awareness and understanding, legal and policy ambiguity, weaknesses in law enforcement institutions, conflicts and violence, restrictions on freedom of speech and organization, protection for whistleblowers and victims, and limited resources. The process of enforcing human rights in Indonesia faces complex challenges. However, there are several efforts that can be undertaken to overcome these obstacles. Some examples of such efforts include strengthening laws and regulations, enhancing the capacity of law enforcement institutions, raising public awareness, protecting human rights defenders, promoting transparency and accountability, international collaboration, advocacy, and campaigns.

**Keywords**

human rights protection, state constitution, enforcement challenges

**Introduction**

Human rights are fundamental rights granted by God and possessed by humans during and after their lifetime, which cannot be arbitrarily revoked without clear, fair, and just legal provisions. Since human rights are a gift from God, it can be said that they are not bestowed by the state and the law. To defend or achieve these rights, a joint struggle through constitutional and political means is necessary.

Indonesia is a country that respects and protects human rights. This can be seen in the constitution, the 1945 Constitution. In the constitution, it is clear that the state respects freedom of association and assembly, religion, access to healthcare, education, and so on. The amendments to the 1945 Constitution have included numerous articles on the recognition of human rights. There are 10 articles on human rights in the amendments to the 1945 Constitution, namely Article 28A to Article 28J of the 1945 Constitution.

Prior to the amendments to the 1945 Constitution, during the period of President B.J. Habibie's government from 1988 to 1990, the People's Consultative Assembly (MPR) of Indonesia issued Decree Number XVII/1998 concerning Human Rights, which included the Indonesian National Human Rights Charter in the Special Session of the MPR in 1998, followed by Law Number 39 of 1999. Both legal regulations have accommodated the Universal Declaration of Human Rights. The provisions in the amendments to the 1945 Constitution (Article 28A to Article 28J) refer to these two legal regulations, but with a systematic reformulation.

Rights are normative elements inherent in every human being, which, in their application, fall within the scope of equality and freedom rights related to interactions between individuals or with institutions. Rights are also something that must be acquired. Human rights issues are frequently discussed, especially in this

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2 A. Masyur Effendi, Hak Asasi Manusian Dalam Hukum Nasional dan Internasional, Ghalia Indonesia, Jakarta, 2014, p. 58.
era of reform. Human rights are highly respected and given more attention in the reform era compared to the pre-reform era. It should be remembered that in the fulfillment of rights, we do not live alone, but we live in social interaction with others. We must not violate the rights of others in our efforts to acquire or fulfill our own rights.³

Normatively, human rights have been regulated in the constitution, the 1945 Constitution (with 10 articles on human rights in the amendments to the 1945 Constitution, namely Article 28A to Article 28J), Law Number 39 of 1999, and other relevant legislation. Institutions related to the enforcement of human rights, such as the Human Rights Court as regulated by Law Number 26 of 2000 on the Human Rights Court, and the National Commission on Human Rights (Komnas HAM), established based on Presidential Decree Number 50 of 1993, have also been established. However, serious and grave human rights violations continue to occur in Indonesia. This clearly indicates the government’s inability to fulfill its responsibility as a law enforcer, particularly in the field of human rights.⁴

The Jambo Keupok tragedy was a severe human rights violation that occurred in Jambo Keupok, South Aceh, on May 17, 2003. In the Jambo Keupok tragedy, 16 civilian residents experienced torture, shootings, killings, and burnings. Additionally, five other individuals were subjected to violence by members of the Indonesian National Armed Forces (TNI), Para Commandos (Parako), and Joint Intelligence Units (SGI).

The Commission for the Disappeared and Victims of Violence (Kontras) in Aceh recorded at least 1,326 cases of violence against civilians. President Megawati Soekarnoputri issued Presidential Decree 28/2003, declaring Martial Law (Darurat Militer, DM) in Aceh. At that time, civil society organizations in Aceh were accused of collaborating with GAM (Free Aceh Movement) and were silenced to prevent them from informing the outside world about the situation in Aceh. Consequently, the status of Martial Law was revoked.

Although the Martial Law status has been lifted, the victims and the government have failed to punish the perpetrators and provide justice for the victims and their families. The final dossier of the Jambo Keupok tragedy was submitted to the Attorney General on March 8, 2017, but there has been no progress yet.⁵

The enforcement of human rights in Indonesia must be consistently pursued, based solely on the spirit of independence that demands equality and freedom for all individuals and nations, and must truly be based on the will to uphold truth and justice for everyone without exception. In practice, the enforcement of human rights still faces various problems that need to be identified

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and resolved, so that Indonesia, as a rule of law country that upholds human rights, is not merely a rhetoric but truly becomes the essence of the Indonesian state.

Many authors have criticized the protection of human rights. Among these researchers, Andi Akhirah Khairunnisa⁶ discusses the Application of Human Rights Principles in the Formation of Local Government Legal Products. The findings of this research indicate that although many human rights principles have been incorporated into existing legislation, there are still many potential human rights violations committed by local governments that disregard these principles. Therefore, further mechanisms are needed when there are Regional Regulations that do not comply with human rights principles.

Then Abdurrahman Sayuti⁷ discusses the Reform of Human Rights Enforcement in Indonesia, where the findings of his research are as follows: Fundamental aspects of human rights enforcement reform in Indonesia, First; Legal subjects, In this case, legal subjects are anything that can support rights and obligations. Legal subjects are understood to be divided into two categories: individuals and legal entities. Individuals as legal subjects may excessively exercise their rights, thus violating the rights of others. Additionally, there is a possibility that they may fail to fulfill their obligations, resulting in their rights being infringed upon. In the life of a nation, a balance between rights and obligations is expected, just like the two sides of a currency that shape each other. Rights will be respected if obligations are fulfilled, and vice versa. The next legal subject is a legal entity, which essentially consists of a group of individuals who come together in a container to pursue a common goal. Nowadays, the role of legal entities and their involvement in the human rights enforcement process in Indonesia is significant.

Second; Law enforcement agencies, in the practice of law enforcement, it is often the ones who understand the law that commit the violations. This situation tarnishes the image of Indonesian law and often leads to apathy from the public regarding the actions of law enforcement agencies. Law enforcement efforts cannot be separated from respecting human rights.

The author's research primarily focuses on severe human rights violations in Aceh, particularly the Jambo Keupok Tragedy. It is interesting to examine the protection of human rights in the constitution of the Republic of Indonesia, followed by the obstacles and efforts in the process of human rights enforcement.

Research method

The specification of this thesis research is descriptive-analytical, which aims to provide a comprehensive description of the prevailing legal conditions in a specific place and time or regarding certain legal phenomena or events in society.⁸

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The research approach used in this thesis is normative juridical, which is a method in normative legal research that utilizes secondary data sources or literature materials. The research is conducted in one stage, namely library research. This research is carried out by examining and studying secondary data related to the research problem, without being supported by primary data obtained directly from the field through interviews. The data collection technique used is only literature study, which involves studying secondary data related to human rights issues. Basically, the most dominant data compiled for writing this thesis are secondary data, namely data from literature sources such as books.

After inventorying the secondary data and legal materials, they are analyzed in a normative-qualitative manner. They are presented in the form of descriptive sentences. Normative, because this research is based on existing legal regulations as positive law. Qualitative means that the data analysis is done through the interpretation of law, both authentic, grammatical, and sociological interpretations, without using numbers, statistical formulas, and mathematics.

**Results and discussion**

1. Protection of Human Rights in the Constitution of the Republic of Indonesia

In the text of the 1945 Constitution before it underwent amendments, there were provisions regarding human rights, consisting of two types of rights: classical human rights and social human rights. Classical human rights are reflected in Article 27 paragraph (1), Article 28, Article 29 paragraph (2), and Article 30 paragraph (1). Meanwhile, social human rights are reflected in Article 27 paragraph (2), Article 31 paragraph (1), and Article 34.

In the constitutions that have also been in effect in Indonesia, such as the RIS Constitution and the 1950 UUDS, the regulations are more detailed. In the RIS Constitution, the regulation of classical human rights is stated in 27 articles, from Article 7 to Article 33. The social human rights are stipulated from Article 34 to Article 41. In the 1950 UUDS, classical human rights are formulated in 28 articles, from Article 7 to Article 34, while social human rights are formulated in 9 articles, from Article 35 to Article 43.

The protection of human rights in the Constitution of the Republic of Indonesia is regulated in several articles of the 1945 Constitution. Here are some articles related to the protection of human rights in the Indonesian constitution:

1. Article 28A: • Guarantees every person the right to life, the right to be free from torture, the right to be free from cruel or inhumane treatment, and the right to be free from arbitrary treatment. • Guarantees every person the

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9 Ibid. hlm 98.
11 Muchsin, op.cit, p. 46.
12 Loc.cit.
right to recognition, guarantees, protection, and fair legal certainty as well as equal treatment before the law.

2. Article 28B: • Guarantees every person the right to freedom of religion and worship according to their beliefs, as well as the right to change their religion or belief according to their own conscience. • Guarantees every person the right to express thoughts and opinions verbally, in writing, through images, or in any other way using the desired language.

3. Article 28C: • Guarantees every person the right to live in a good and healthy environment, as well as the right to obtain a good and healthy environment, and the right to assurance of environmental protection and restoration. • Guarantees every person the right to education and teaching.

4. Article 28D: • Guarantees every person the right to be free from discriminatory treatment based on any grounds and ensures that every person has equal standing before the law.

5. Article 28E: • Guarantees every person the right to communicate and obtain information to develop their personality and social environment, as well as the right to seek, obtain, possess, store, process, and convey information using all available channels.

6. Article 28F: • Guarantees every person the right to assemble, express opinions, and deliver opinions peacefully.

7. Article 28G: • Guarantees every person the right to obtain employment and a decent livelihood for humanity.

In addition, there are other relevant articles in the Indonesian constitution that protect human rights, such as Article 27, Article 29, and Article 30, which regulate the right to religion, cultural rights, and other human rights.

The Indonesian government has also adopted various legislation and regulations, such as the Constitution Number 39 of 1999 concerning Human Rights and Law Number 26 of 2000 concerning Human Rights Courts, to strengthen human rights protection in the country.

Meanwhile, provisions on human rights, in addition to being regulated in the 1945 Constitution of the Republic of Indonesia, are also regulated in several other legislation, including:

5. Law Number 5 of 1998 concerning the Ratification of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.
7. Law Number 20 of 1999 concerning the Ratification of ILO Convention No. 138 Concerning Minimum Age for Admission to Employment.
12. Presidential Decree Number 48 of 2001 concerning the Secretariat General of the National Commission on Human Rights.¹⁴

Various human rights legislation in Indonesia is the result of a democratic process, which aligns with other elements in a modern rule of law country. The substance of these national human rights instruments includes what is regulated by human rights law and what actions fall under the category of human rights violations. However, all national human rights instruments should strive to synchronize/harmonize with international human rights. Ideally, national human rights law should be formed as an incorporation of universal human rights values accepted and recognized by the United Nations, accompanied by the behavior of respecting and upholding human rights by all elements of the nation, in harmony with the provisions of these universal human rights.

Thus, human rights law in Indonesia can be considered effective, both by the national and international community, and Indonesia will be able to avoid social pressure from other nations and will not be categorized as a severe human rights violator that is isolated in international relations.

The enforcement of human rights in Indonesia began with the establishment of the National Commission on Human Rights (Komnas HAM) to investigate severe human rights violations. This commission was established in 1993 based on Presidential Decree No. 50 of 1993, concerning the National Commission on Human Rights. Since 1999, the existence of Komnas HAM has been based on the law, namely Law No. 39 of 1999 concerning Human Rights, which also stipulates the existence, objectives, functions, membership, principles, completeness, as well as the duties and authority of Komnas HAM.

In addition to the authority granted by Law No. 39 of 1999, Komnas HAM is also empowered to investigate severe human rights violations through the issuance of Law No. 26 of 2000 concerning Human Rights Courts. Based on Law No. 26 of 2000 concerning Human Rights Courts, Komnas HAM is the authorized institution to investigate severe human rights violations. In conducting these investigations, Komnas HAM can form ad hoc teams consisting of the National Commission on Human Rights and representatives of the community.

In carrying out its functions, duties, and authorities to achieve its objectives,

Komnas HAM refers to instruments related to human rights, both national and international. The national instruments include:

1. The 1945 Constitution and its amendments.
5. Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination.
6. Other relevant national legislation.
7. Presidential Decree No. 50 of 1993 concerning Komnas HAM.

The international instruments include

1. The UN Charter of 1945.
2. The Universal Declaration of Human Rights of 1948.
3. Other international instruments regarding human rights that have been ratified and accepted by Indonesia.

Institutionally, Komnas HAM is considered to have no interests other than the protection and enforcement of human rights in Indonesia. The members of Komnas HAM are also considered to have a high level of integration and technical capability to conduct investigations. In conducting investigations, Komnas HAM forms ad hoc teams consisting of Komnas HAM members and representatives of the community.

Komnas HAM has the authority to take actions in conducting investigations, such as examining incidents that are reasonably suspected to involve severe human rights violations based on their nature or scope, receiving reports or complaints from individuals or groups regarding severe human rights violations, seeking testimonies and evidence, summoning complainants, victims, or accused parties to provide statements and testimonies, summoning witnesses to testify, reviewing and collecting information at the scene of the incident and other relevant locations, summoning relevant parties to provide written statements or submit necessary documents in their original form. In addition to these actions, upon the order of the investigator, Komnas HAM can carry out actions such as examining documents, conducting searches and seizures, conducting on-site inspections of houses, premises, buildings, and other relevant locations occupied or owned by specific parties, and calling upon experts in relation to the investigation.

When conducting investigations into allegations of severe human rights violations, Komnas HAM must inform the activities to the investigator. Once the investigator concludes that there is sufficient preliminary evidence of severe human rights violations, the findings are handed over to the investigator. Within a maximum of 7 working days, Komnas HAM submits the entire investigation findings. If the investigator deems the investigation incomplete, the investigator returns the investigation findings with instructions for completion, and the
investigator is obliged to complete it within 30 days.

In addition to having the authority to conduct investigations into severe human rights violations, Komnas HAM also has the authority to request written information from the Attorney General regarding the progress of investigations and prosecutions of severe human rights violations.

The next government, in its efforts to uphold and protect human rights, will enact Law Number 26 of 2000 concerning the Human Rights Court. This law is the formal law of Law No. 39 of 1999. With the enactment of Law Number 39 of 1999 concerning Human Rights and Law No. 26 of 2000 concerning the Human Rights Court, it is hoped that it can reduce and prevent human rights violations in Indonesia and assist in the enforcement and protection of human rights in the country. The enforcement of human rights is one of the important issues in the governance and society of Indonesia.

The absence of a human rights court has some impact on the fulfillment of victims' rights, especially compensation, which is the responsibility of the state. Compensation is the right of victims of serious human rights violations under Article 7 of the Witness and Victim Protection Law. Compensation in the Witness and Victim Protection Law refers to the compensation given by the state because the perpetrator is unable to fully provide compensation to the victim or their family, which is their responsibility. In the case of "Jambo Keupok," the Witness and Victim Protection Agency (LPSK) has deployed a team to assess the condition of the victims. From the investigation, a total of 15 victims, consisting of 10 females and 5 males, are entitled to receive medical and psychological rehabilitation assistance. The 15 victims of the Jambo Keupok incident, comprising 10 females and 5 males, have applied for assistance from the LPSK. The LPSK team then conducted assessments of each applicant to see their current conditions.15

The victims, along with their families, have never given up in seeking justice from the state for all the physical, material, and emotional damages they have experienced. Until now, the state has not fulfilled its responsibility to ensure justice for the victims.16 The trauma caused by the Jambo Keupok incident has left bitterness and suffering in their lives. That is how the victims perceive themselves as victims of human cruelty. Even until now, it can be said that the victims are still being overlooked.

2. Obstacles and Efforts in the Process of Upholding Human Rights

The enforcement of human rights in Indonesia has experienced ups and downs since the establishment of the country. There are times when all citizens receive their human rights, but more often there are oppressed groups whose human rights are ignored. The Indonesian nation cannot turn a blind eye to various human rights violations that have occurred in the country, both during the New Order era and the current reform era.

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15 Pengadilan HAM Peristiwa Jambo Keupok Penting bagi Kompensasi Korban https://lpsk.go.id/berita/detailberita/2503
Article 9 of Law No. 26 of 2000 concerning the Human Rights Court states that "crimes against humanity as referred to in Article 7 letter (b) are acts committed as part of a widespread or systematic attack, knowing that the attack is directed against the civilian population." Thus, what needs to be proven is that crimes against humanity are committed as part of an attack. This attack is carried out systematically or on a large scale and clearly directed at the civilian population.

Although efforts to enforce human rights (HAM) continue to be made in Indonesia, there are still several obstacles that need to be overcome. Here are some common obstacles faced in the process of upholding human rights in Indonesia:

1. Lack of awareness and understanding: Many Indonesians still have a limited understanding of human rights and the importance of protecting those rights. This can lead to a lack of support and attention to human rights issues, as well as a lack of participation in the process of upholding human rights.

2. Lack of legal clarity and policies: There are deficiencies in the legal framework and policies related to human rights in Indonesia. Some existing laws may be inadequate or not fully in line with international human rights standards. Additionally, the implementation of laws and policies is often inconsistent and not decisive.

3. Weaknesses in law enforcement institutions: Despite the existence of law enforcement institutions such as the police and the prosecution, there are still weaknesses in terms of capacity, independence, and accountability of these institutions. This can hinder the process of upholding human rights and fair trials.

4. Conflicts and violence: Indonesia still faces internal conflicts and issues of violence, both in the context of social, ethnic, religious conflicts, and armed conflicts. This situation can hinder efforts to uphold human rights, as human rights violations related to these conflicts and violence often occur.

5. Restrictions on freedom of expression and association: There are limitations on freedom of expression, association, and peaceful assembly in Indonesia. Some laws and regulations are often used to restrict the activities of civil society and human rights activists, which can hinder efforts to uphold human rights.

6. Protection for whistleblowers and victims: Often, whistleblowers and victims of human rights violations face threats, intimidation, and retaliation from responsible parties. Adequate protection for whistleblowers and victims remains a problem that needs to be addressed.

7. Limited resources: The limited availability of human, financial, and technical resources can be a barrier to upholding human rights in Indonesia. These limitations can affect the capacity of relevant institutions and reduce the effectiveness of human rights enforcement.

To overcome these obstacles, continuous efforts are needed to enhance
public awareness and understanding of human rights, strengthen legal frameworks and policies in line with international human rights standards, reinforce law enforcement institutions, address conflicts and violence, eliminate unnecessary restrictions on freedom of speech and organization, and enhance protection for whistleblowers and victims of human rights violations. Additionally, increased allocation of resources and better cooperation between the government, human rights institutions, civil society, and international organizations are also necessary.

The process of enforcing human rights in Indonesia faces several complex obstacles. However, there are several efforts that can be undertaken to address these barriers. Here are some examples of actions that can be taken:

1. Strengthening laws and regulations: Improving and enhancing the legal framework related to human rights can help overcome barriers in enforcing human rights. This includes formulating clear and effective laws and updating regulations in accordance with international standards.

2. Enhancing the capacity of law enforcement institutions: Training and capacity-building for law enforcement officers, such as police officers, prosecutors, and judges, are crucial. They need to understand human rights and have adequate skills to protect and enforce those rights.

3. Increasing public awareness: Educating the public about human rights and the importance of respecting those rights can help overcome barriers in enforcing human rights. Through public campaigns, education, and active participation of the community, awareness of human rights can be enhanced.

4. Protection for human rights defenders: Human rights defenders often face threats, repression, or violence. Therefore, it is important to provide adequate protection for them, including legal protection, security, and psychosocial support.

5. Transparency and accountability: Enhancing transparency and accountability in law enforcement and monitoring human rights violations is crucial. Relevant institutions must be willing to be accountable for their actions and take firm actions against human rights violations.


7. Advocacy and campaigns: Civil society organizations and advocacy groups need to continue advocating and campaigning for human rights. They can garner public support, bring human rights issues to court, and mobilize public opinion to drive positive change.

It is important to note that efforts to overcome barriers in enforcing human rights are an ongoing process and require active involvement from all relevant parties, including the government, law enforcement institutions, civil society, and the general public.

Referring to Article 20(1) of Law No. 26 of 2000 on Human Rights Courts,
the investigation conducted by the National Commission on Human Rights (Komnas HAM) is an initial step to determine if there is sufficient preliminary evidence to classify the case in Aceh as a gross human rights violation. The communication and transparency of Komnas HAM in conducting investigations have been weak, particularly in communicating investigation results to the victims, their families, or supporting teams. Effective communication is necessary as mandated by Articles 100 and 101 of Law No. 39 of 1999 on Human Rights.

KontraS, together with the victims, has participated in efforts to enforce human rights by submitting investigative reports on the Jambo Keupok incident. However, until now, KontraS has not received further information on the investigation report that has been submitted to Komnas HAM. The weak communication of Komnas HAM to civil society regarding the lack of adequate explanations about the members of the investigation team is a cause for concern. According to Article 18(2) of the Human Rights Court Law, the team consists of Komnas HAM and community representatives. It is essential to consider this matter as the selected community representatives must meet several criteria, including professionalism, dedication, high integration, and a deep understanding of human rights.17

Formal constraints are faced in requesting the National Human Rights Commission (Komnas HAM) to provide protection to witnesses and victims involved in cases of alleged gross human rights violations in Aceh. To determine evidence of gross human rights violations in Aceh, clear standards must be used. One of the most important aspects is strengthening the position of witnesses and victims. When they receive protection and services from the Witness and Victim Protection Agency (LPSK), the information provided to the investigative team of Komnas HAM will be of high quality. To encourage high-quality investigations, Komnas HAM can conclude that victims of alleged gross human rights violations in Aceh receive protection and recovery from LPSK.

The government has made efforts to resolve cases of gross human rights violations in Aceh. President Jokowi initiated a non-judicial settlement mission for 12 past cases of gross human rights violations on June 27, 2023, at one of the former sites of violence, namely Rumah Geudong in Pidie Regency, Aceh. Rumah Geudong was one of the TNI (Indonesian National Armed Forces) posts used as a place of torture for Aceh residents accused of being members or sympathizers of the Free Aceh Movement (GAM).

**Conclusion**

1. The enforcement of laws regarding human rights violations in Indonesia is still concerning and lacks clarity, as many cases of human rights violations in Indonesia remain unresolved, both during the New Order era (1966-1998), which was the darkest period for freedom and human rights enforcement, and the reform era (1999-present), which aimed to bring

about significant changes in various national structures but had limited impact on human rights enforcement.

2. Considering the concerning state of human rights enforcement in Indonesia, it is recommended that the government, as the policy maker and decision-maker, and other relevant stakeholders, create strict regulations to protect human rights and promptly develop accountable human rights enforcement policies in Indonesia. Additionally, efforts to promote awareness and enforcement of human rights, starting with the National Action Plan (RAN) for Human Rights 2004-2009, should be redirected and expanded. While initially targeting vulnerable groups such as children and women, awareness campaigns should also be directed towards groups that have the potential to commit human rights violations, such as the military, police, and public order officers (Satpol PP).

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