

**LEGAL REVIEW OF THE RESPONSIBILITY OF DOCTORS WHO ACT  
WITHOUT THE CONSENT OF THE PATIENT'S FAMILY (CASE STUDY  
OF DECISION NUMBER 3203K/PDT/2017)**



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**Abstract.** Within the field of medicine, practitioners are guided by teachings on ethics and morals to fulfill their duties and responsibilities in serving the community. Imagine a scenario when a doctor breaches the relevant ethical and moral standards. If such a situation arises, the discipline will be enforced either by the professional association responsible for setting the ethical guidelines or by legal authorities who will process and impose penalties to prevent doctors from neglecting their duty to get informed permission and engaging in malpractice. Informed consent serves a dual purpose for both patients and doctors. For doctors, it provides a sense of assurance when performing medical procedures on patients and acts as a form of protection against potential legal claims or lawsuits that may arise from any unforeseen accidents. Regarding informed consent, it refers to the patient's entitlement to receive comprehensive information regarding their medical condition, the recommended medical procedures, and the potential outcomes associated with each decision.

**Keywords:** *Informed Consent, Unlawful acts, Malpractice*

## **A. Introduction**

### **Background**

Health Law is a recently established field of law in Indonesia. It includes elements of Civil Law, Administrative Law, Criminal Law, and Disciplinary Law that specifically target the health subsystem within society. One component of health law consists of its definitions, specifically Legal Subjects, Rights and Obligations, Legal Events, Legal Relationships, Legal Objects, and legal communities. For instance, this concept encompasses legal matters about pharmacies and pharmacists who transition into occupational health roles.

Health is an inherent entitlement of every individual and a fundamental component of the well-being that the principles of the Indonesian nation must actualize, as stated in Pancasila and the preamble to the 1945 Constitution of the Republic of Indonesia.

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Consequently, all endeavors and actions aimed at enhancing public health are conducted in accordance with the principles of impartiality, involvement, safeguarding, and durability. These principles significantly shape Indonesia's human capital, bolster national resilience, and enhance competitiveness and national development.<sup>1</sup>

## B. Literature Review

According to the 1945 Constitution, health is recognized as a fundamental human right. According to Article 28H, every individual has the entitlement to lead a successful life in terms of both physical and mental well-being, reside in a favorable and healthy environment, and access healthcare services. Additionally, Article 34, paragraph 3 explicitly states that the State is responsible for ensuring adequate healthcare and public service facilities. This implies that the government must provide sustenance to the ill and make efforts to preserve their well-being to stay health.<sup>2</sup>

Legally, the relationship between a patient and a doctor falls within the scope of a contractual agreement due to the doctor's responsibility to provide medical care and maintain the patient's well-being recovery.<sup>3</sup> As defined by the Articles of Association of the Indonesia Health Law Association (PERHUKI), health law encompasses all legislative regulations that are directly connected to the preservation and supply of healthcare. This pertains to the rights and responsibilities of individuals and society as a whole when it comes to receiving health services and interacting with health service providers. It encompasses several areas such as organizations, facilities, guidelines for medical service standards, health sciences, law, and other legal matters.<sup>4</sup> Medical law is part of health law, which concerns medical care/services (*medical car/service*).<sup>5</sup>

Doctors, as a minority group in society, have held positions of authority in the medical sector for numerous years, offering medical aid to patients who trust them. Patients will obediently comply with the doctor's instructions without comprehending the underlying reason and consequence of the medical intervention. Their sole desire is to be cured. The doctor-patient connection is established through a therapeutic engagement, often known as a therapeutic agreement.

<sup>1</sup> Muhamad Sadi Is, *Ethics and Health Law Theory and its Application in Indonesia*, Jakarta, Kencana, 2015, p. 90

<sup>2</sup> *Ibid.*

<sup>3</sup> Bahder Johan Nasution, *Health Law of Physician Responsibility*, Jakarta, Rineka Cipta, 2005, p. 6

<sup>4</sup> Muhamad Sadi Is, S.HI., M.H., *Health Law Ethics Theory and Its Application in Indonesia*, Jakarta, Kencana, 2015, p. 1.

<sup>5</sup> Muhamad Sadi Is, S.HI., M.H., *Health Law Ethics Theory and Its Application in Indonesia*, Jakarta, Kencana, 2015, p.

A legal relationship, also known as a *rechtbetrekking*, refers to a connection between two or more entities governed by the law and involving legal subjects and objects. This relationship is established and managed by the power of law consequences.<sup>6</sup>

Health services will involve various stakeholders, notably hospitals, healthcare providers, and patients. The relationship that will ensue is a straightforward and unmediated one between the doctor and the patient. The medical profession is regarded as an honorable calling committed to the welfare of humanity. This profession is widely recognized for its continuous adherence to moral and intellectual standards. Being a doctor involves a solid inclination to offer medical treatment to sick individuals to aid their recovery and to enhance the overall health of healthy individuals by preventing sickness and improving their overall well-being. Therefore, a physician must continually exhibit the fundamental quality of selflessness. The patient can grant consent or decline any medical interventions that healthcare professionals may propose in response to their illness. Patients must provide honest, comprehensive, and accurate information to the best of their abilities and knowledge, in addition to their rights and health problems.<sup>7</sup>

In performing medical procedures, the doctor must ask for consent from the patient.<sup>8</sup> In addition to the patient, consent can also be given by the next of kin after explaining the doctor's actions towards the patient.<sup>9</sup> Tabish Health Services defines excellent health services as the delivery of health service products that effectively fulfill the requirements of individuals and the community. Efficient healthcare services necessitate strict adherence to ethical standards in management, including applying professional norms in behavior, organization, and daily activity evaluation. To ensure constant adherence to standards, rapidly identify any deviations, and give ongoing support for following professional norms, it is necessary to build an observation system.

This legal relationship will result in the creation of legal actions and entail legal ramifications. The crucial legal consideration is determining both the party's accountability and the precise level of their liability.

<sup>7</sup> Article 26 Letter d, Regulation of the Minister of Health Number 4 of 2018 concerning Hospital Obligations and Patient Obligations

<sup>8</sup> Article 2 paragraph 1, Regulation of the Minister of Health Number 290 MENKES/PER/III/2008 concerning the Approval of Medical Actions

<sup>9</sup> *Ibid.*

### **C. Methods**

In this study, the author selected a specific example pertaining to the legal obligations of doctors for analysis. In regards to the case, the author succinctly said that a dentist carried out dental implant procedures without disclosing this information to the patient. Consequently, the patient experienced adverse consequences in the form of physical discomfort and psychological distress as a result of the surgery, which led to damage to the dental implant due to the lack of written instructions. Despite experiencing pain and damage from the original surgery, the patient ultimately consented to have follow-up surgery for the implantation of a dental implant. As a patient, he has the prerogative to decline any medical interventions by the doctor that pertain to his future well-being. Subsequently, this case was presented before a court of law.

As a result of the mistakes and negligence of medical personnel, it can cause losses that have a big impact in addition to damaging or reducing public trust in the medical profession and also causing losses to patients.<sup>10</sup>

This study examines the legal implications of doctors performing actions without the consent of the patient's family. The specific case being analyzed is Decision Number 3203 K/Pdt/2017. The aims of this study are twofold: firstly, to ascertain the legal ramifications of administering medical treatment without obtaining consent, and secondly, to examine the implementation of the regulations of Informed Consent as outlined in Decision Number 3203 K/PDT/2017.

### **D. Results And Discussion**

#### **Legal consequences of the absence of informed consent.**

When a patient visits a doctor for a check-up, there exists a service-buy relationship between the patient and the doctor, essentially the same as the relationship between a producer and a consumer. Patients can act as consumers of health services, whereas doctors or health workers serve as health services providers. This enduring partnership is referred to as a therapeutic agreement or therapeutic transaction. Within therapeutic exchanges, patients hold an equal standing to doctors or health workers. The patient possesses the authority to dictate which medical interventions may be conducted on their body and which ones are prohibited. The right of patients to autonomy over their own bodies is considered a fundamental human right, as Munir Fuady classified under the framework of the right to self-determination. Regardless of a doctor's expertise, it is imperative to obtain patients' agreement before conducting any medical operations.

Individuals must acquire adequate information from a physician when considering whether to undergo a medical procedure or receive medical treatment. Informed consent is the procedure in which the doctor provides information to the patient, who subsequently approves the medical activity after being informed by the doctor. The presence of therapeutic occurrence is one factor, and therapeutic transactions are subject to the norms of civil law.

<sup>10</sup> Jurnal Cita Hukum ( Indonesia Law Journal), Jakarta, pp. 8-9

The lack of informed consent, as viewed through the lens of civil law, can be examined from three different angles:

1. According to Article 1320 of the Criminal Code, the lack of informed consent satisfies one of the agreement's requirements.
2. The absence of informed consent is categorized as the default.
3. The lack of informed consent, which is categorized as an illegal action Based on Article 1365 of the Criminal Code.<sup>11</sup>

The lack of informed consent leads to the failure to meet one of the agreement's requirements, as stated in Article 1320 of the Civil Code. Therapeutic transactions are not directly governed by the Civil Code but rather by the provisions outlined in Article 1319. All agreements, whether dominant or nominative, are governed by Chapter I of Book III of the Civil Code. And are sourced in Chapter II Buki III of the Civil Code<sup>12</sup>.

If the requirements outlined in Article 1320 of the Civil Code, which pertain to the validity of an agreement, are further elaborated upon and linked to the concept of informed consent, the following can be deduced:

1. The binding agreement requires the parties' permission, indicating an agreement to exchange mutual information, which is informed consent. Informed consent is the agreement between a patient or their representative and the healthcare provider over a specific action or decision.
2. The capacity for collaboration refers to the patient's ability to enter into a contractual agreement, specifically providing informed permission and taking action, allowing the patient. If the contract cannot be executed, it may be represented by the legal guardian, the spouse of either parent, the adult sibling, the adult offspring, or the individual granted power of attorney. Meanwhile, doctors and health workers must possess the necessary abilities that patients demand, which can be substantiated by applicable certificates or letters.
3. A subject matter refers to a specific topic or issue. Informed consent creates rights and obligations that must be met by all parties involved. Legal measures must be taken to address the issue if there is a disagreement over rights and responsibilities. In such cases, the injured party can file a lawsuit against the defendant for failing to fulfill their commitments due to negligence.

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<sup>11</sup> Herniwati, S.H., M.H, *Health Professional Ethics and Law*, Bandung, Widiania Bhakti Persada Bandung, 2020, p, 162

<sup>12</sup> *Ibid.*

Second, the absence of informed consent which is classified as a default. If it is associated with default, then the absence of informed consent can be further described in the following four forms<sup>13</sup> :

1. Failure to accomplish objectives: for instance, in a therapeutic interaction, the patient and the doctor have mutually agreed to excise the cyst from two specific locations on the patient's body. The patient did not consent to the removal of only one item, which resulted in the patient experiencing adverse consequences. Despite the initial agreement between the patient and doctor to perform a less invasive appendectomy using an advanced technique, the procedure ended up being conducted through conventional surgery without the patient's consent. This resulted in harm to the patient, contrary to what was promised.
2. Achievements being fulfilled but delayed: for instance, the patient and the doctor have mutually agreed to carry out the surgery on a specific day and date, although on the scheduled day of the surgery, the patient is not prepared. Unfortunately, the doctor arrived late, causing the procedure to be delayed, which hurt the patient.
3. It is not advisable to perform actions that have been agreed upon. For instance, the patient grants permission to get a specific drug category and declines. Additional categories of drugs that the doctor may prescribe. Nevertheless, the physician continues to record the medications that are declined by the patient, leading to adverse consequences that the patient does not desire.

Furthermore, the lack of informed permission is categorized as an illegal action or a *rechtmatigedaad* by Article 1365 of the Civil Code. This statement asserts that any action that breaks the law and causes harm to another individual requires the perpetrator to provide compensation for their actions. The individual responsible for causing a loss must compensate the other person for the loss. Substitute the loss. To initiate a legal action based on a violation of the law, it is imperative to satisfy the requirements outlined in Article 1365 of the Civil Code., namely:<sup>14</sup>

1. Patients must suffer losses
2. There is an error
3. There is a causal relationship between error and loss

The act is against the law Regarding the criteria for the act which can be classified as unlawful acts, jurisprudence has established four criteria for unlawful acts since the arrest of Lindenbaum Cohen in the Hoge Raad case on January 31, 1919, namely:<sup>15</sup>

1. The act is contrary to the legal obligation of the perpetrator
2. The act violates the rights of others
3. The act violated the rules of moral order
4. This act is contrary to the principles of propriety, thoroughness, and prudence that a person should have in his association with fellow citizens of the community or towards the property of others.

<sup>13</sup> Herniwati, S.H., M.H, *Professional Ethics and Health Law*, Bandung, Widiana Bhakti Persada Bandung, 2020, p, 162

<sup>14</sup> Herniwati, S.H., M.H, *Health Professional Ethics and Law* , Bandung, Widiana Bhakti Persada Bandung, 2020, p, 162

Suppose the above theory applies to the causal relationship in the claim of non-informed consent. In that case, the patient must be able to prove the following:<sup>16</sup> A legal relationship exists between the patient and the doctor or healthcare provider:

1. The doctor or health worker has either not fulfilled their duties or has neglected to provide the necessary care.
2. The patient must give their informed consent to hold the doctor or health workers responsible for any losses incurred due to not adhering to the informed consent declaration.

If the doctor's actions result in losses to patients, the absence of fresh, informed consent can lead to legal issues. The losses in question encompass a broad range of consequences, including tangible damages such as physical discomfort or disfigurement that impede everyday functioning and intangible damages such as the infringement upon deeply held views or religious convictions. These losses can serve as grounds for legal action.

### **Judge's Consideration Decision Based on Applicable Legal Rules** **Judge's Considerations and Decisions**

Based on the verdict from the West Jakarta District Court Number 11/PDT. G/2016/PN. JKT. BRT, then the lawsuit from the Plaintiff is declared rejected, considering that the act of dental implant surgery without informed consent in writing is by Article 3 paragraph Permenkes Number 290/MENKES/Per/III/2008, which states that any high-risk medical procedure must obtain written consent signed by the person entitled to give consent, not provable 12 by the Claimant. According to the judge's consideration, the Defendant was not proven to have committed a violation because the medical action of implant placement is included in minor surgery (minor surgery) that is not high-risk and can endanger the patient's safety/health, so it is enough to obtain oral consent. Then, the Plaintiff appealed against the West Jakarta District Court Decision Number 11/PDT. G/2016/PN. JKT. BRT dated May 10, 2016, but the Jakarta High Court ruled that it was not enough reason to cancel the West Jakarta District Court Decision Number 11/PDT. G/2016/PN. JKT. BRT, the decision was again strengthened by being taken over and used as the basis by the Jakarta High Court with Decision Number 669/PDT/2016/PT. DKI, on January 27, 2017, stated that the lawsuit from the Appellant, originally the Plaintiff, was rejected. Then, the Appellant, originally the Plaintiff, filed an appeal to the Supreme Court with Registration Number 3203K/Pdt/2017. The Supreme Court decided to grant part of the lawsuit from the Cassation Applicant, who was previously the Appellant/Plaintiff and canceled the decision of the Jakarta High Court Number 669/PDT/2016/PT. DKI on January 27 with the West Jakarta District Court Number 11/PDT. G/2016/PN. JKT. BRT, considering that the High Court upholding the District Court's decision did not give sufficient consideration, where although the medical procedure of dental implants was

<sup>15</sup> Rosa Agustina, *Unlawful Acts*, Jakarta: FHUI Postgraduate Program, 2003, p. 39

<sup>16</sup> *Ibid*

a minor surgical procedure, the witnesses, especially the Plaintiff witness, said that the implant installations were an act full of the risk of failure. Therefore, the actions of the Defendant, who has performed several medical actions, including implant installation surgery, without asking for informed consent, are acts of carelessness in carrying out their profession or have committed malpractice, so the act of dental implant installation surgery by the Defendant to the Plaintiff can be qualified as PMH.

In addition to filing a lawsuit in court, the Plaintiff also complained to the Indonesia Medical Council ("KKI"). That, in this case, the Medical Council Indonesia decided that the Defendant had violated the discipline of the medical profession based on Article 3 paragraph (2) letter a, letter b, letter f, letter h, letter i, letter j, Regulation of the Indonesia Medical Council Number 4 of 2011 concerning Professional Discipline of Doctors and Dentists which resulted in the revocation of the Registration Certificate (STR) belonging to drg. Yus Andjojo or the Defendant, so that the Defendant is unable to practice medicine for 12 (twelve) months, i.e., from July 18, 2016, to July 18, 2017

#### **Applicable Legal Rules**

1. The Defendant's actions have violated Article 2 of Law Number 29 of 2004 on Medical Practice, which stipulates that medical practice should be conducted by Pancasila principles and scientific values, with a focus on benefiting patients, ensuring justice, promoting humanity, maintaining balance, and safeguarding patient protection and safety.
2. On July 25, 2014, Plaintiff expressed their trauma from the surgery and even brought their wife along to persuade Defendant about their fear. Nevertheless, Defendant proceeded with the surgery on Plaintiff, even though Plaintiff, as a patient, should have the autonomy to decline the medical interventions that Defendant, as a doctor or medical professional, would provide, as stipulated in Article 56 paragraph (1) of Law Number 36 of 2009 regarding Health, which states: "Every individual possesses the right to accept or reject any or all of the medical interventions that will be administered to them, after receiving and comprehending comprehensive information about the procedure."
3. The patients' entitlement to decline medical procedures described above is likewise governed by Article 52 of Law Number 29 of 2004 regarding medical practice, which stipulates the following: Patients receiving medical services have the entitlement to:
  - a. Receive a comprehensive explanation of medical procedures as outlined in Article 45 paragraph (3);
  - b. Seek a second opinion from another physician or dentist, Receive services based on their medical requirements, Decline a medical intervention, and Obtain the contents of their medical records.
4. The patient's right to decline medical procedures from doctors and/or health workers is clearly and firmly regulated in Decree Number Skep/034/Pb Pdgi/V/2008, which is the Indonesia Code of Dental Ethics of the Executive Board of the Indonesia Dentists Association. Article 10, paragraph (2) states that dentists in Indonesia are obligated to respect the patient's rights if they refuse the recommended treatment. Dentists can also suggest that the patient seek a second opinion.



5. According to Article 68 paragraph of Law Number 36 of 2009 concerning Health, only qualified and authorized health workers can perform the installation of drug implants and/or medical devices into the human body. This procedure must be carried out in specific health service facilities.
6. The Plaintiff and the Plaintiff's family have never given informed consent to the Defendant regarding the medical actions taken by the Defendant, as stated in Article 45 paragraphs (1) to (5) of Law Number 29 of 2004 concerning Medical Practice.
7. The medical or dental procedures mentioned above, which involve high risk, include surgical procedures or other invasive measures, as explained in the clarification of Article 45 paragraph (5) of Law No. 29 of 2004 concerning Medical Practice. According to Article 45 paragraph and paragraph (5) of Law Number 29 of 2004 concerning Medical Practice jo. Article 2 paragraph (1) and Article 3 paragraph (1) of the Regulation of the Minister of Health of the Republic of Indonesia Number 290/Menkes/Per/III/2008 concerning the Approval of Medical Actions of the Minister of Health of the Republic of Indonesia mentioned above, it is evident that the Defendant has performed 5 (five) oral surgical procedures on the Plaintiff for the placement of dental implants without obtaining written consent (informed consent) from the Plaintiff to the Defendant. However, such consent is an absolute requirement stipulated by the law before a doctor can carry out any medical procedure, especially surgical procedures which pose significant risks to the patient's safety.
8. The Defendant's act of subjecting the Plaintiff to treatment or surgical procedures without obtaining informed consent, under the pretense of practicing a new technique that the Defendant had only learned for a week, falls within the category of Irresponsible Medical Malpractice Actions. This action makes the Plaintiff a test subject for the Defendant's new technique, resulting in both tangible and intangible losses for the Plaintiff.
9. The Defendant's act of medical malpractice is an illegal action that causes harm to the Plaintiff, both tangible and intangible. This is clearly stipulated in Article 1365 of the Civil Code, which states that any act that violates the law and causes harm to others requires the person at fault to compensate for these losses. Moreover, according to Article 1366 of the Civil Code, individuals are held accountable not only for damages caused by their intentional actions, but also for damages caused by their lack of care or disregard for safety. Additionally, an act is considered a violation of the law under Article 1365 of the Civil Code if it satisfies the following criteria: a. The action is illegal. Judicial ruling The Supreme Court of the Republic of Indonesia is represented by the official website [mahkamahagung.go.id](http://mahkamahagung.go.id). b. There is a margin of error; c. Resulting in financial losses;
10. There exists a cause-and-effect relationship between the mistake and the incurred losses; The Defendant's unlawful act falls under the provisions of Article 1365 jo. 1366 of the Civil Code and Article 58 paragraph (1) of Law Number 36 of 2009 concerning Health. These regulations state that individuals have the right to seek compensation from individuals, health workers, and/or health providers who cause harm or losses due to errors or negligence in the health services provided.

11. Due to Defendant's unlawful actions, Plaintiff experienced permanent physical disability and neurological disorders, leading to a decline in Plaintiff's body balance. This has significant negative effects on the Plaintiff's well-being, both in tangible and intangible aspects, as stipulated in Article 1365 of the Civil Code.

## **E. Conclusion And Suggestions**

### **Conclusion**

1. Consent is given after being fully informed about the relevant facts and potential consequences. In a critical situation necessitating a surgical procedure, A medical emergency refers to a critical condition in which a patient requires immediate treatment by a doctor, typically involving a major or high-risk medical procedure such as surgery. However, due to the potential risks involved, obtaining prior approval by signing an informed consent form is necessary. During this procedure, the patient possesses certain entitlements before giving consent, including the right to get enough information regarding the medical intervention they will undergo. In a medical emergency, if the patient is unconscious and quick action from a doctor is necessary, informed permission is not necessary for medical intervention. The entities authorized to grant consent for medical procedures are stipulated in Article 13 of the Permenkes on the Approval of Medical Procedures. These parties include patients or their immediate family members who can make decisions. Competent patients refer to adult individuals who are at least 21 years old or married and who possess both consciousness and mental well-being. When an adult patient is being cared for, consent is provided by a guardian or curator. For patients who are under the age of 21 and lack parents/guardians or have disabled parents/guardians, approval is obtained from the next of kin or the mother. In the event of refusal, the patient and their closest family members have the right to decline a medical procedure after receiving a written explanation. The patient bears the responsibility for the consequences of refusing medical intervention.
2. The Regulation of Medical Practice aims to safeguard doctors and patients, enhance the quality of medical services offered by doctors and dentists, and establish legal assurance for the community, doctors, and dentists. Article 50 of the Medical Practice Law provides legal certainty for doctors by granting them legal protection as long as they adhere to professional and operational norms. Law Number 36 of 2009 includes Article 27, which provides doctors with legal protection in executing their professional duties. According to Article 27, health workers can receive compensation and legal safeguards while performing their professional obligations.

### **Suggestion**

1. It is imperative to initiate public education regarding the medical informed consent procedure in Indonesia to ensure that all parties involved in therapeutic transactions are not at a disadvantage. Furthermore, when attempting to self-administer medication under the guidance of a physician, it is imperative to request a comprehensive elucidation from the doctor regarding the nature of the illness, the course of action to be taken by the doctor, and the requisite procedures that necessitate mutual agreement. This enables patients undergoing treatment to actively collaborate with doctors in their shared pursuit of patient health and safety. Medical professionals and healthcare institutions must possess a comprehensive understanding of health legislation to be aware of the rights and responsibilities of all parties involved and to ensure that no

individual feels unfairly treated. The doctor-patient connection should be cultivated to promote harmony, enabling amicable resolution of any disputes.

2. The parties responsible for authorizing the medical procedure must ensure that the agreed-upon course of action is beneficial and conducive to the patient's rehabilitation. The consenting party must possess legal capacity and be legally authorized to execute the agreement to mitigate any potential future complications arising from unforeseen medical procedures. When making a medical refusal, it is important to do so while fully conscious and understanding the potential implications for which one can be held responsible. In law enforcement, particularly in medical cases, judges must utilize a specific legal framework known as medical law. Instead of relying on Criminal or Civil law, the case should be evaluated within the parameters of the relevant legislation, such as the Medical Practice Law, Health Law, Permenkes Approval of Medical Acts, and other laws pertaining to the field of medicine. It is crucial to do this to prevent medical professional developers from feeling overwhelmed in their pursuit of promoting someone's well-being and safety.

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