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Legal Consequences for Cancellation of a Willing Deed in the Settlement of Instruction Disputes

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Abstract

This research is about understanding grants, testament grant deeds and how to cancel a testament grant deed as well as analyzing the factors that cause a testament grant deed containing a grant (legaat) to be canceled by the court and the legal consequences of the object of the testament grant. The research was conducted using a normative juridical legal research method and then described descriptively. The results of the study can be concluded. the factors that cause the will (legaat) grant deed can be canceled and the legal consequences after the testament grant deed are canceled through a decision that has permanent legal force (inckracht). Inherited assets often cause various legal and social problems, therefore they require arrangement and settlement in an orderly and orderly manner in accordance with applicable laws and regulations. Making a will (testament) is a legal act, a person determines what happens to his wealth after death. The creation of a testament is bound by a certain form and method if it is ignored it can cause the testament to be canceled. In accordance with the provisions of Article 875 of the Civil Code that a will made before a notary can be canceled if it turns out that the procedure for making it is not carried out in accordance with the terms and conditions that apply to the will grant deed.

Keywords
grant; will deed; cancellation of will grant deed and legal consequences

I. Introduction

A grant is a gift made by someone to another party that is made while he is still alive and the distribution is carried out while the grantor is still alive. Inheritance or Inheritance is the transfer of property belonging to the testator to the heirs. The granting of inheritance and its implementation is carried out when the testator has died. A will is a deed that contains a statement of a person about what he wants will happen after he dies and by which it can be revoked (while the testator is still alive).

Heirs are people who have died and bequeath their inheritance. Heirs are people who are entitled to inheritance. The heirs must be alive. Inheritance is the entire property along with the rights and obligations of the testator, both receivables and debts. A will is a way of inheritance. According to Article 875 of the Civil Code, a will is a deed containing a person's statement about what he wants will happen after he dies and which can be revoked (while the testator is still alive). The granting of a will is given when the testator is still alive, but the implementation is carried out when the testator dies.

Article 874 of the Civil Code states that all assets left by a person who dies are the property of his heirs according to the law, insofar as he has not made a valid decision regarding this matter. The legal stipulation is a will. That is, if there is a valid will, the will must be executed by the heirs. On the other hand, if there is no will, all the inheritance of the testator belongs to the heirs.

Inheritance law in Indonesia is pluralistic, meaning that in Indonesia there are several inheritance laws that apply to Indonesian citizens, namely western inheritance law regulated in the civil code (Milayani, Oktavia, 2017), Islamic inheritance law regulated in the Qur'an and hadith, customary inheritance law, the arrangement depends on the environment where the inheritance problem occurs. The transfer of property of a person who has died will be transferred to his heirs in accordance with the provisions of the applicable regulations regarding inheritance, however, apart from the heirs, a will is often found made by the testator. which contains the will of the heir during his life and may contain the appointment of heirs or the distribution of the inheritance to be given to the heirs or the distribution to be given certain goods or in the case of all or part of the assets being given, which this will can only be implemented if the testator has died. The will of a person who has died has a complex meaning in material terms (in the form of the will of a person who has died for his property) and is then formed with a deed or formal matter (put in a deed made based on the terms of its form) which is called a will or testament. A will that is often used in practice is a will in a general form (Abdul Ghofur Ansari, 2006). This general will is regulated in Articles 938 and 939 of the Criminal Code,

a. Must be made before a notary and must be attended by two witnesses;
b. The heir must explain clearly to the notary what he wants;
c. Notaries must write clearly about what is explained by the testator (Devka Octara Putera Akbar Girindrawardhana, 2021).

The use of this general will is indeed classified as the most recommended, because the notary can oversee the contents of the will, by providing advice so that the contents of the will do not conflict with the laws and regulations, and are expected to avoid disputes and the will of the testator can be carried out completely without harm other parties (Hasballah Thaib, 2006).

Meanwhile, according to Islamic law, based on the Qur'an, the word "grant" is derived 25 times in 13 letters. The Qur'an as the main source of Islamic law encourages its people to help each other. One of them is based on Surah Al-Imran verse 92 which means "you will never reach goodness, until you spend some of the wealth you love. And whatever you spend, then verily Allah knows it." According to commentators, grants are a circumcised practice and are encouraged in Islam, especially to the closest family. This practice is based on the Qur'an, Sunnah and consensus. Among the verses of the Qur'an that encourage the practice of giving is as the word of Allah swt T based on Surah Al-Nisa' verse 4 which is "Then if they hand over to you some of the dowry with pleasure, eat (take) the gift (as food) which is delicious and has good consequences. Based on Surah Al-Baqarah verse 177 which means "... give the treasure he loves to his relatives ..." Rasulullah SAW said "gifts to give you will surely arise affection, love and shake hands with each other, there will be annoyance between you will disappear." . Based on the verses of the Qur'an and Hadith, it can be concluded that the legal grant is Sunnah in Islam, the goal is that every action we take has a good value in it. In Islam there are several kinds of names, one of which is a gift. The family is a basic family unit consisting of a husband, wife and children (Batubara, 2019). Grants can also be interpreted as a positive social concern by helping each other towards fellow human beings or as a gift from parents to their children by giving part or all of their assets voluntarily without asking for anything in return. The grant has been regulated clearly and in detail in the book of fiqh muamalah which is guided by the Qur'an and Hadith which is in the form of the Compilation of Islamic Law (hereinafter referred to as KHI).

Based on Article 212 of the KHI that grants cannot be withdrawn, except for parental grants to their children. Rasulullah SAW said which means "The person who asks for his gift back is the same as the person who swallows back his saliva." (Narrated by Al Bukhari and Muslim) 4 based on the words of the Prophet Muhammad SAW, Islamic law stipulates that goods that have been donated or have been given to others cannot be asked back or canceled. However, with the exception of grants to parents to their children, these grants can be withdrawn or canceled.Muliana and Akhmad Khisni, 2017).

From the background of the problems that have been described above, the authors formulate the framework of the problem as follows: What are the factors that cancel the deed of will grant as an authentic deed and the legal consequences after being canceled through a decision that has permanent legal force.

II. Research Method

This research is a normative juridical research, in the form of a diagnostic and perspective. Data obtained by means of library research. The approach in this study is a case approach. Sources of data used in this study are primary, secondary and tertiary data sources. The method of thinking used is the method of deductive thinking (Soekanto, Sorerjono and Sri Mamudji, 2018)

III. Results and Discussion

3.1 Factors that can Cancel the Deed of Will Grant (Legaat) by the Heirs

a. Cancellation of the Deed of Will according to the Civil Code

According to the Civil Code, there are no provisions that provide restrictions on grants given by the grantor as regulated in the Compilation of Islamic Law. In principle, the Civil Code states that a testamentary grant that has been given by a person to another person cannot be withdrawn or canceled, except in cases as regulated in Article 1688 of the Civil Code, namely:

1. If the terms of the grant are not met by the grantee. In this case, the donated goods remain with the donor, or he may ask for the goods back, free from all burdens and mortgages that may be placed on the goods by the grantee as well as the results and fruits that have been enjoyed by the grantee since he failed to fulfill the requirements. - the terms of the grant. In such case the grantor may exercise his rights against third parties who hold the immovable property that has been granted as well as against the grantee himself.
2. If the person who is given the gift is guilty of committing or participating in an assassination attempt or some other crime against the donor. In this case, the goods that have been donated cannot be contested if the goods are about to be or have been transferred, mortgaged or encumbered with other material rights by the recipient of the grant, unless the claim to cancel the grant has been submitted to and registered in the Court and included in the announcement in the Article 616 of the Civil Code. All transfers, mortgages or other charges made by the grantee after the registration is void, if the claim is later won.
3. If the donor falls into poverty while the one given the grant refuses to provide for him. In this case the goods that have been submitted to the donor but the recipient of the grant does not provide a living, so that the grant that has been given can be revoked or withdrawn because of not providing a living (Faizah Bafadhal, 2013)

Based on Article 1666 of the Civil Code, a grant is an agreement in which the donor, during his lifetime, free of charge and irrevocably, submits an object for the purposes of the recipient of the grant who receives the delivery. Meanwhile, the notion of will inheritance is the distribution of inheritance to people who are entitled to receive the inheritance at the last will (will) of the heir, which is stated in writing (Article 874 of the Civil Code), for example in a notarial deed (testamentary inheritance).

According to Article 874 of the Civil Code, all inheritance and deceased heirs belong to their heirs, unless the testator has legally determined it with a will (testament). As for what is meant by a will (testament), based on Article 875 of the Civil Code is a deed containing a person's statement about what will happen after he dies, and by which it can be withdrawn. Based on its form according to article 931 of the Civil Code, a will may only be declared, either in writing itself or in ographis, either by a general deed, either a secret or a closed deed.

In the process of canceling a testament grant deed, basically it can only be done by filing a lawsuit for the subject matter of the cancellation of the grant to the Court. The filing of the lawsuit is requested by the heirs who are submitted to the Court, so that the deed of will grant is canceled and the property is returned to its original state to the heirs (Hariyanti, Eko, 2015).

The definition of a will in Article 875 of the Civil Code is "A will or testament is a deed containing a person's statement about what he wants to happen after he dies, which he can revoke". A will must not conflict with the law. limitation of statements in a will is important, especially in the case of absolute inheritance rights (legitime portie). A will maker must have his mind, meaning that he must not be mentally ill and people who have serious illness, so that he cannot think regularly (Article 895 of the Civil Code), and must be at least 18 years old (Article 897 of the Civil Code).

The conditions for the validity of a will are regulated in articles 888, 890 and 893 of the Civil Code. A will must be understandable or enforceable or not contrary to decency, does not contain a false cause (meaning if the heir knows a false cause, it means he will not make it), and a will will be void if it is made because of coercion, and trickery.

In the Provisions for the Granting of Wills, among others: The property in the will must be the rights of the testator. A will is made orally before two witnesses, or in writing before two witnesses, or before a notary. A will grant can be declared void if:

a) A will grant becomes void if the candidate who receives a will based on a judge's decision who has permanent legal force is punished for:
   1. Found guilty of murder or attempted murder or serious abuse of the testator;
   2. Is declared defamatory to have filed a complaint that the testator has committed a crime punishable by five years in prison or a heavier sentence;
   3. Found guilty by force or threats to prevent the testator from making or revoking or changing the contents of the will for the benefit of the prospective will grantee.
   4. Found guilty of embezzling or tampering with or falsifying wills and wills.
b) A will becomes void if the person appointed to receive the will:
   1. did not know of the existence of the will until he died before the death of the will;
   2. aware of the existence of the will, but he refuses to accept it;
   3. knows the existence of the will, but never declares acceptance or rejection until he dies before the death of the testator.
c) The will becomes void if the will is destroyed.

   There are also several factors that can cancel the will, including:

1. The making of a will/testament can be done before a Notary, by making it in the form of a deed. Every testament made before a Notary is in the form of a deed, which is called a Notary Deed. A notary deed is a perfect, strongest and most complete means of proof so that apart from guaranteeing legal certainty, a notarial deed can also avoid disputes. Pouring an act, agreement, stipulation in the form of a notarial deed is considered better than pouring it in an underhand letter. The defect of a Notary Deed carried out by a notary official by not carrying out according to legal procedures in making a will grant deed can result in the cancellation of a testament grant deed, therefore the notary official should have an honest nature,
2. If the testament grant deed is carried out by a non-owner of the goods or assets, the heirs can apply for the cancellation of the deed. The donor can only donate property or objects that are his right, he cannot donate other people's property. That is also why, it is still possible for the grantor to enjoy the results of the grant. There is a rule of law which states: "If a grant is made to another party on inheritance that has not been distributed to the heirs, then the grant is null and void, because one of the conditions for the grant is that the goods that are donated must belong to the grantor himself, not an inherited property that has not been divided and not assets that are still bound in a dispute.
3. If the recipient of the testament grant does not carry out his obligations. The person who gives the grant is permitted by law to make an agreement with the recipient of the grant that the grantor can still have the pleasure or enjoy the results of the object that is donated. In addition, the article on the grantee is obliged to provide allowances to the grantor if it turns out that the grantor then falls into poverty. Otherwise, according to Article 1688 of the Civil Code, the grant can be withdrawn. In the rule of law: Grants in customary law aim to make the recipient support the grantor when the grantor is old or sick. If the grantee does not carry out the care obligations of the grantor, the grant can be canceled because the grantee does not carry out his obligations. In fact, if the grantee commits an act that is very detrimental to the grantor,
4. If the deed of testament is made secretly. In grants, there are many interests that must be protected by law. Not only the interests of the giver and recipient of the grant, but also third parties who have an interest such as heirs. That is why, in making a will, it cannot be done secretly. At least there is a contract or agreement between the giver and the recipient of the grant, so that the interests of the heirs are protected. Article 1682 of the Civil Code threatens to cancel grants made without a notarial deed.
5. If the land or property that is the object of the will is in a guaranteed status. The act of granting land or property which is the object of dispute in court and in a state of confiscation of collateral (conservatoir beslag) is null and void. Consequently, the person who receives the deed of will on the land does not become the legal owner of the land concerned.
6. If in the contents of the grant deed, the will of the grantor transfers the assets to the beneficiary exceeding the absolute rights of the heirs (ligitime portie). Article 913 of the Civil Code has the following meaning: "The absolute portion or legitime Portie, is a part of the inheritance that must be given to the heirs, in a straight line according to the law, against which the deceased is not allowed to determine something, either as a gift between the living, or as a will". The purpose of the legislators in establishing this legitime portie is to protect the heirs from the heir's tendency to favor other people who are not heirs.

b. Cancellation of Will Grants according to the Compilation of Islamic Law

According to Article 211 of the Compilation of Islamic Law, it is stated that grants cannot be withdrawn, except for grants from parents to their children. Cancellation or withdrawal of a gift (grant) is an act that is forbidden, even though the grant occurs between two people who are brothers or husband and wife. The only grants that may be withdrawn are those made or given by parents to their children. According to the hadith of Ibn Abbas, the Messenger of Allah (PBUH) said that a person who asks for his gift back is like a dog that vomits and then eats the vomit again, this hadith was narrated by Mutafaq'alaih. In another narration, Ibn Umar and Ibn Abbas stated that the Prophet once said, it is not lawful for a Muslim to give a gift and then he asks for the gift back, except the parents in a gift that he gave to his child. This hadith is considered valid by At Tarmizi, Ibn Hibban and Al Hakim, An Nasa 'and Ibn Majah. However, even if it is impossible to withdraw an item that has been donated (according to some opinions, except for a grant given to a child), the withdrawal can also be made if the grant given is in order to get rewards and compensation for the grant given. For example, someone who is elderly gives a grant to a certain person, in the hope that the recipient of the grant will maintain it, but after the grant is implemented, the recipient of the grant does not pay attention to the condition of the grantor. So in this case the grantor can withdraw the grant he has given. The legal provisions regarding this matter can be guided by the hadith narrated by Salim from his father, from the Prophet Muhammad, he said which means as follows: "Whoever wants to give a gift, then he is more entitled to it as long as he has not been repaid". The Compilation of Islamic Law adheres to the principle that grants can only be made 1/3 of their assets, parental grants to their children can be counted as inheritance. If the grant will be implemented deviating from these provisions, it is hoped that there will be no division between families. The principle adopted by Islamic law is in accordance with the culture of the Indonesian nation and also in accordance with what was stated by Muhammad Ibnul Hasan, that people who donate all their property are stupid and do not deserve to take legal action. Because the person who gave the property is considered incompetent to act legally, the grant implemented is considered null and void, because he does not meet the requirements to make the grant. In connection with the description above, it can be stated that in principle a grant cannot be canceled or withdrawn. However, if a grant given by a grantor exceeds 1/3 of his wealth, it can be canceled, because it does not meet the requirements for the grant and violates the provisions as stipulated in Article 210 of the Compilation of Islamic Law.

According to Islamic law, grants to those who were originally entitled to the inheritance at the time of the testator's life are not considered as inheritance. However, if parents give grants to their children, even though the inheritance is quite large, Islamic teachings regarding the obligation to do justice in giving grants to other children must also be given grants from the inheritance. Grants adhere to the principle of equal distribution between all children without discriminating between one another, as taught by Rasulullah SAW to his friends first. As a human being, when determining the right to give grants, you must be fair, especially to the closest people, one of whom is a child. The fair distribution is based on Article 176 of the KHI for girls, if only one person gets half the share, if two or more people jointly get two-thirds of the share, and if it is a boy, then the share of the boy is two to one with the girl. The best way out is for boys and girls to be equal or equal. Because giving a grant to a child can be counted as a testamentary grant, there is a difference of opinion if the father differentiates the giving of a grant to his child, based on the writing of several hadiths which explain that giving to a child must be the same without distinguishing between one child and another. Rasulullah SAW said, "Be fair to your

children, be fair to your children, be fair to your children" (HR Ahmad, Abu Daud and An-Nasai). It will be different if the dispute over the cancellation of the grant is carried out by the grantor against his heirs not based on the proper legal rules. The grantor gives part or all of his assets to his heirs in accordance with the pillars and conditions of the grant, so that the grant is valid

Based on the KHI in Article 171 defines a grant is the gift of an object voluntarily and without compensation from someone to another person who is still alive to be owned. Pillars and conditions of a grant In Islam, a grant contract will not be formed but after fulfilling the following pillars and conditions:

1. The giver of the grant (wahib) should be someone who has skills such as perfect intellect, mature and rushd. The giver of the grant has the goods that are donated, therefore the owner of the property has full power over his property. Grants can be made without limits and to whom he likes, including non-Muslims, as long as it does not violate the syarak.
2. The recipient of the grant (Al-mawhub lahu) may consist of anyone as long as he has the ability to have mukallaf property and not mukallaf. If the recipient of the grant is not a mukallaf, as if he is still not legally competent, the grant may be given to his guardian or trust holder for his party. The recipient of the grant must accept the property that is donated and have the power to hold it.
3. Goods or assets that are donated (Al-mawhub) need to meet the following requirements:
   a) Halal goods or assets
   b) A type of item or property that has value in terms of syarak
   c) The goods or assets belong to the donor
   d) Assets really exist at that time, they can't be things that will exist
   e) The assets cannot be connected with the assets of the grantor which cannot be separated, such as trees, plants and buildings such as land. According to the Maliki, Shafi'i, and Hambali schools of thought, it is legal to give a gift to a shared property that cannot be distributed. Based on the teachings of Islam, goods that are still protected (houses) may be donated if they get permission from the pawnbroker or borrower.
4. Sighah, namely consent and qabul or actions that carry the meaning of giving and receiving grants. The conditions are as follows:
   a) There are connections and similarities between consent and qabul
   b) Not subject to certain conditions
   c) Not required by a certain period of time. Grants are required for a certain time as applicable in al-'umra and al-ruquba is valid but the condition is void.

While the definition of heirs in Islamic inheritance law, referring to the compilation of Islamic law ("KHI"), heirs are people who at the time of death have blood relations or marital relations with the heirs, are Muslim and are not hindered by law from becoming heirs. The heirs are considered to be Muslim if it is known from the Identity Card or confession or practice or testimony, while for a newborn baby or child who is not yet an adult, the religion according to his father or environment (Abdulkadir Muhammad, 2014).

A person is prevented from becoming an heir if by a judge's decision which has permanent legal force, is punished because:

1) Is accused of having killed or attempted to kill or severely maltreated the heir;
2) Charged with defamation of having filed a complaint that the testator committed a crime punishable by 5 years in prison or a heavier sentence.

Wills in Islamic Inheritance Law are guided by the Compilation of Islamic Law ("KHI"). In Islamic inheritance, it is known as a will. A will is the gift of an object from the testator to another person or institution which will take effect after the testator dies. A person who is at least 21 years old, has common sense and without coercion can bequeath part of his property to another person or institution. Ownership of the property can only be exercised after the testator dies. It should be remembered that a will is only allowed as much as a third of the inheritance unless all the heirs agree. The will to the heirs is only valid if it is approved by all the heirs. This statement of approval is made orally in the presence of two witnesses or in writing before two witnesses before a Notary. In the will, both written and oral, it must be stated clearly and clearly who or whom or what institution is appointed to receive the property in the will.

3.2 Legal Consequences of Cancellation of Wills by Heirs

In essence, law is nothing but the protection of human interests, in the form of rules and norms. The legal relationship that arises between the grantor and the grantee is a legal relationship because of the agreement between the grantor as the debtor and the grantee as the creditor. The grant creates a legal relationship between the grantor and the grantee, even though the relationship is a one-sided relationship (the grantor gives the goods to the grantee for free and without asking for anything in return). This means that the grantor only has obligations without rights. In giving a grant, it is necessary to first examine the appropriateness and appropriateness of the recipient of the grant to receive the grant. so that later problems such as the cancellation of grants will not arise which causes the legal relationship between the two parties to become problematic. In the Civil Code, it has been explained that grants that have been given cannot be withdrawn. However, the grantor can file a claim for cancellation of the grant if the grantee has done things as stated in Article 1688 of the Civil Code. The grantor can apply for the cancellation of the grant and it can be proven in court. The heirs can also apply for the cancellation of the grant deed in court by submitting evidence in accordance with the facts and legal norms regarding will grants.

If the testament grant deed is made before a notary thenA notarial deed can be canceled or null and void by law or the level of proof is reduced to a private deed if the conditions determined by the applicable laws and regulations are not fulfilled, without the need for legal action from the person concerned with the existence of a problem with the will made by a notary, the deed can be brought before the court and drag the notary who made it. Likewise, in the case of making a will, a notary is also given the obligation based on Article 16 of the UUJN to be able to:

a. make a list of deeds related to wills based on the order in which the deed is made each month;
b. send the list of deeds to the Central Register of Wills who are responsible for notarial work within 5 (five) days in the first week of each following month;
c. record in the repertoire the date of sending the list of wills that have been sent at the end of each month. If the notary does not fulfill the obligations given by the UUJN related to the will, it can harm other parties and it is possible that the notary will be involved in a lawsuit because he has committed an unlawful act.

The defect of a testament grant deed (Notary Deed) can result in the cancellation of a notarial deed and in terms of sanctions or legal consequences of cancellation can be divided into; null and void, can be canceled, and non existent. The legal consequences of a cancellation in principle are the same as null and void, can be canceled or non-existent, i.e.

all three make the legal action invalid or the legal action has no legal consequences. The point of difference at the time the cancellation takes effect, namely:

1. Canceled by law, as a result, the legal action carried out has no legal consequences since the occurrence of the legal action or is retroactive (ex tunc), in practice null and void is based on a court decision that has permanent legal force;
2. Can be canceled, as a result the legal action taken has no legal consequences since the cancellation and where the cancellation or ratification of the legal action depends on the particular party, which causes the legal action to be cancelled. Deed whose sanctions can be canceled, remains valid and binding as long as there is no court decision that has permanent legal force which cancels the deed;
3. Non-existent, as a result of which the legal action is non-existent or non-existent, which is caused by not fulfilling the essentials of an agreement or not fulfilling one or all of the elements in a particular legal act. Dogmatically, non-existent sanctions do not require a court decision, but in practice, a court decision which has permanent legal force and implications is the same as null and void.

Cancellations are regulated incompletely in Articles 1444 - 1456 of the Civil Code and are equipped with Jurisprudence and Doctrine as other sources of law, where cancellations can be caused by Inability to Act, Inability to Act, Defects of will, form of agreement, contrary to law and contrary to public order and morality.

IV. Conclusion

Based on this description, the following conclusions can be drawn:

1. According to the Compilation of Islamic Law, basically grants cannot be canceled or withdrawn, except for the grants of parents to their children. Likewise, according to the Civil Code that a grant that has been given by a person to another person cannot be withdrawn or canceled, except: (a) If the conditions of the grant are not fulfilled by the recipient of the grant, (b) If the person who is given the grant is guilty of committing or participate in an assassination attempt or some other crime against the donor, (c) If the donor is poor while the person being given the grant refuses to support him/her.
2. Cancellation of a testament grant made before a Notary, the cancellation process must use a court decision. The panel of judges who decided on the cancellation of the testament grant deed, based on the reason for its decision that the cancellation of the testament grant deed was possible because the heirs felt that they had been disadvantaged by facts and legal norms based on the law in terms of the validity of the issuance of the testament grant deed.
3. The legal consequences arising from the inheritance of the testamentary grant requested for cancellation in the Court with a decision to cancel the will that has permanent force will make the ownership of the grant property returned to the grantor. All the assets of the grant will return to their own property. And if it is the heir who submits the cancellation of the will, the property will return to the heir or if the heir has died, the inheritance will return to the heirs as before, as without a will. If the object of the grant has been reversed or has been certified on behalf of the grantee, then the certificate is declared no longer valid.

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