PULMONOLOGY

Non-Compliance with Administrative Tribunal Decisions in Health System Governance: A Legal and Policy Analysis

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Abstract

This research aims to (1) Know the root of the Non-Executive Administrative Court Decision Problems (2) To find out the legal consequences of State Administration officials who are reluctant to implement the Ambon PTUN Decision Number 10 / G / 2015 / PTUN.ABN. This studyuses a normative approach, namely research conducted by examining secondary data or library materials that are focused on examining the application of norms in positive law; and the Non Doctrinal approach, which is to synchronize the prevailing law with the empirical reality in society. This research is qualitative with a descriptive pattern. This type of research is descriptive analytical research, namely research that explains and describes what it is about the Non-Executive Judicial Verdict Problems of the State Administrative Court (Ambon State Administrative Court Decision Case Study Number: 10 / G / 2015 / PTUN. ABN By Mayor Tidore Islands) . The results show that (1) Obstacles in the execution of decisions of the State Administrative Court based on Article 116 of Law Number 51 of 2009 are: Decision, Obstacles in execution of decisions due to State Administrative Officials are Regional Heads whose position is as Political Officials, Obstacles to execution The verdict was caused by the State Administration Officer who was sued was the official who received the authority of the pseudo delegation, Obstacles regarding TUN officials' understanding of the theory of state law and AAUPB, technical obstacles, juridical obstacles (regarding laws and regulations), obstacles related to legal principles, Barriers in terms of limited authority of judges, obstacles due to changes in the regional autonomy system, obstacles due to disobedience of state administration officials. And third; Efforts that can be made against the PTUN decision that are not carried out by state administrative officials / entities such as Criminal Efforts with criminal reports and Civil Efforts by filing civil suits (2) The Role of State Administrative Courts in the practice of resolving Government Administration disputes in Indonesia due to the absence of an institution executives, as well as a strong legal basis, result in the decision of the State Administrative Court having no compulsion.

Keywords: Problematics, Non-Executive Decisions, State Administrative Court, Mayor of Tidore Islands.

INTRODUCTION

Indonesia is a rule of law state, as stated in Article 1 Paragraph (3) of the 1945 Constitution of the Republic of Indonesia that Indonesia is a constitutional state. The elements of the rule of law (*rechtsstaat*) are (a). There is a guarantee of human rights (*grondrechten*) (b) There is a division of power (*scheiding van machten*) (c) The government must be based on legal regulations (*wet Matigheid van het bestuur*) (d) There is an Administrative Court (*rechspraak administration*) (Budiarjo, 1982).

In the life of the nation and the state, there is always a trade-off between power, law and democracy that comes from the perspective on understanding these three things. Even though sometimes interpreting the three wrong principles can happen and can balance the

principles of a rule of law, democracy and human rights, it can also violate the principles of administrative law and general principles of proper governance. Therefore, one of the important and interesting aspects in this regard are the passages that tell of a meeting point or a copy between the sides of law, democracy and administrative law. Every government official has the authority given by the applicable laws and regulations or based on the principle of legality. With this given authority, the government takes legal actions in order to serve or regulate citizens.

General government authority includes three things, namely authority in terms of material (material bevoegheid ration), authority in terms of territory (bevoegheid ratione loci), and authority in terms of time (bevoegheid ratione temporis).

Administrative Court or what is commonly called the State Administrative Court is a court that has the authority to resolve State Administration problems (State Administrative Disputes). The objective of the Administrative Court is to provide legal protection and legal certainty, not only for the people but also for the State Administration in the sense of maintaining and maintaining a balance between the interests of society and the interests of individuals as members of society. For `` state administration, order, peace and security will be maintained in carrying out its duties for the realization of a capable, clean and authoritative government in a constitutional state based on Pancasila. This means that in a preventive manner to prevent actions of the state administration which are against the law and detrimental, while repressively such actions are necessary and must be subject to "sanctions" (Basah, 1992). The regional head, in realizing the authority given to him in managing his autonomy, is authorized to regulate and administer the region according to the aspirations and interests of the community as long as it does not conflict with legal provisions and public interests. The State Administrative Court (PTUN) has a general task of carrying out judicial powers, which is to receive, examine, and judge and resolve every case submitted to it.

LITERATURE REVIEW

Definition of Judge's Decision

In the opinion of Sudikno Mertokusumo (2006), a judge's decision is a statement which a judge, as a state official who is authorized to do so, is pronounced in court and aims to end or resolve a case or dispute between the parties. Then Syahrani stated that a verdict was a judge's statement uttered at a court session which was open to the public to settle or end a case. A decision could mean a judge's statement in a court session containing considerations according to reality, legal considerations. The definition of a decision above contains important elements which are required to be referred to as a decision. The conditions for a verdict can be said as follows:

1. The decision is pronounced by a state official who is authorized by statutory regulations;
2. The decision is pronounced in court proceedings open to the public;
3. Decisions that have been handed down have gone through legal processes and procedures;
4. Decisions are made in written form;
5. Decisions aim to settle or end a case (Wantu, 2014).

Decisions of State Administrative Courts

In the decisions of the State Administrative Courts (PTUN) there are times when *condemnative* decisions can also constitute decisions of the *constitution*. Statement of void or invalid a decision is *ex tunc* merely *declaratoir.*Decisions that arenature, *constitutive in* for example the decision to impose the payment of compensation, the imposition of implementing rehabilitation and the stipulation of postponement of the implementation of the State Administrative Decree (KTUN), which results in the temporary delay of a government decision. Decisions that arenature *constitutief in* even if they create new or nullifying legal conditions The old legal condition was not immediately implemented and required a punitive decision as a follow-up so that the material for thedecision could *constitutief* become real. Therefore, what is relevant for what is to be implemented is adecision *condemnatory*.

When linked with the verdict form regulated in Law No. 5 of 1986, the decision of which is *condemnatoir* include:

a. Obligation to revoke administrative decisions that have been declared null and void (Article 97 paragraph (9) letter a);
b. Obligation to revoke administrative decisions and issue substitute decisions (Article 97 paragraph (9) letter b);
c. Obligation to issue a decision in the case of a negative fictitious decision object (Article 97 paragraph (9) letter c);

RESEARCH METHODS

This research aims to (1) Know the root of the Non-Executive Administrative Court Decision Problems (2) To find out the legal consequences of State Administration officials who are reluctant to implement the Ambon State Administrative Court Decision Number 10 / G / 2015 / PTUN.ABN.

This study uses a normative approach, namely research conducted by examining secondary data or library materials that are focused on examining the application of norms in positive law; and the Non Doctrinal approach, which is to synchronize the prevailing law with the empirical reality in society. This research is qualitative with a descriptive pattern. This type of research is descriptive analytical research, namely research that explains and describes what it is about the Non-Executive Judicial Verdict Problems of the State Administrative Court (Ambon State Administrative Court Decision Case Study Number: 10 / G / 2015 / PTUN. ABN By Mayor Tidore Islands) .

RESEARCH RESULTS AND DISCUSSION

Problems in Implementing the Administrative Court Decision TheState Administrative establishment of aCourt is an advanced idea in the context of realizing a modern rule of law. But what has become a problem for nearly 30 (thirty) years of the existence of the State Administrative Court is the implementation (*executie*) of the decisions of the State Administrative Court.

In this regard, Irfan Fachrudin stated: "the problem of implementing judicial decisions (*executie*) within the State Administrative Court has existed since the establishment of this judicial body, however until now it remains a problem, in other words there has not been a mechanism for how decisions should be found. implemented in accordance with the material of the decision. From several studies, it is revealed that the success rate of implementing decisions within the State Administrative Court is relatively low, both before and after the birth of the 2004 forced execution.

Case Study of Ambon National Administrative Court Decision Number: 10 / G / 2015 / PTUN.ABN by the Mayor of Tidore Islands). The action of the Mayor of Tidore Islands did not revoke Decree Number: 631.1. 2015 On 15 May 2015 concerning the ratification

and appointment of the elected Village Heads of the Tidore Selatan, North Tidore, North Oba, Central Oba, Oba and Oba Selatan sub-districts, the period of service in 2015-2021, especially in Galala Village, Ampera Village, Kusu Village, and Nuku Village and not issuing a new Decree is an act contrary to the decision of the PTUN Court which is legally binding.

The role of the State Administrative Courts in the practice of resolving "Government Administration" disputes in Indonesia due to the absence of an executorial institution, as well as a strong legal foundation, has resulted in the decision of the State Administrative Court having no compulsion. The State Administrative Court Law also does not explicitly and clearly regulate the issue of force of State Administrative Court decisions, so that the implementation of the Decision really depends on the goodwill of the State Administrative Bodies or Officials in obeying the law. This situation is quite concerning, because the principle of the existence of a State Administrative Court, to place juridical control in government has lost its meaning in the Indonesian state administrative bureaucracy system.

Execution Mechanism Against Administrative Court Decisions

a) Legal Protection Theory

Principles of the theory of legal protection against government action rests on and originates from the concept of accounting and protection of human rights because according to western history, the birth of the concepts of recognition and protection of human rights is directed towards limitations. and the placement of public and government obligations Legal protection is often associated with an important role. The general principle of good governance, because basically legal protection in public law arises because of the consequences of the existence of discretionary authority or *Freies Ermessen* on the government which allows the government to take unilateral legal action. and generally apply legal consequences, but in fact without the existence of *Freies Ermessen the* Government is allowed to act unilaterally in the public jurisdiction, such as issuing decisions and provisions, the existence of authority. With discretion or freies ermessen from the government, a legal protection is needed for a person or civil legal entity to prevent government activities that deviate from the purpose of being given a position (Soleh, 2018).

In administrative law, there are two legal protections, namely preventive legal protection and repressive legal protection. Preventive legal protection, in this case the people are given the opportunity to submit objections (*inspraak*) or their opinions before a government decision takes a definitive form, which aims to prevent disputes. In Government Administration practice, preventive legal protection is known as administrative or administrative measures, while repressive legal protection aims to resolve disputes, usually in State Administration practice, which can be found in proceedings at the State Administrative Court.

Obstacles in the Execution Process of State Administrative Revenue

Decisions Judges' decisions in terms of ontology have their own object of study, namely the application of law to facts that contain definitive resolution of a dispute arising from these facts or facts. Therefore, so that the verdict can provide a definitive resolution to the dispute, then the verdict must be able to ensure that the verdict is a decision produced through an impartial, objective, fair and humane decision-making process so that it can be accepted or accepted by the parties concerned and by the general public.

A judge's decision which has permanent legal force if it is not implemented by the defendant, means it is useless and has no legal certainty. Even though the judge's decision is a binding law or law between the parties concerned. Therefore, it is only natural that the

defendant voluntarily implemented the decision of the State Administrative Court. Bearing in mind that a judge's decision contains 3 things which are legal arguments in a judge's decision: law as a decision that has authority (positivity); law as order (coherence). Law as a proper arrangement of human relations (justice); and these legal arguments in principle all demand a claim in the judge's decision. The claim in question is that every judge's decision must contain three things which are the ideals of the law, namely: positivity, coherence, justice (Untoro, 2018).

There are also several obstacles that have colored the implementation of TUN court decisions during the period of Law No. 5 of 1986 concerning State Administrative Courts until the enactment of Law No. 9 of 2004 and Law no. 51 of 2009 concerning the first amendment and the second amendment to Law no. 5 of 1986 concerning State Administrative Courts. These obstacles are in the form of obstacles regarding the understanding of state administration officials with the theory of the rule of law and AAUPB, technical obstacles, juridical obstacles, obstacles related to the application of legal principles, the influence of regional autonomy and disobedience of state administration officials.

a. Barriers to the Understanding of State Administration Officials against the Theory of the Rule of Law and AAUPB.

Understanding the theory of a democratic rule of law is necessary for the realization of a clean and authoritative government. A democratic rule of law can be realized through the existence of a balance of power within the framework of the distribution of state power. The obstacle that hinders the implementation of the supervisory function of the State Administrative Court is the failure to apply the democratic rule of law theory. The author argues that in addition to a lack of understanding of the theory of a democratic rule of law, a poor understanding of the theories of state administrative law, both by the government and by the judiciary, is a factor that hinders the implementation of the supervisory function of the State Administrative Court. The process of implementing the TUN Court decision before the revision of Law No. 5 of 1986 through Law No. 9 of 2004, implemented based on the theory of *floating execution*. The application of floating execution related to the principles of administrative law as previously described also requires *self-respect*, namely the awareness of state administrative bodies or officials to implement / comply with the TUN Court decisions on their own initiative based on the *political will of the* government. There is also a need for effective oversight from people's representative institutions to monitor the government's attitude in carrying out its obligations, but in fact this supervision has never been carried out. The application of thetheory is *floating execution* not followed by awareness from state administrative bodies or officials based on the principle of self respect.

b. Technicalbarriers are

technicalrelated to case handling techniques. The emergence of these obstacles is due to, among other things, a lack of understanding of the criteria for an executable decision, so that there are cases where the judiciary does not include an important element in the verdict that is actually needed in execution, such as an order to revoke a decision that has been declared null and void. Or also because of the unclear considerations and rules of judgment which give the defendant an obligation, such as an order to issue a new decision without considering whether the plaintiff has met the requirements necessary for the defendant to use the basis for issuing a decision. This will make it difficult for the defendant to carry out the order of trial, because the decision ordered to be issued has not met the requirements

C. Juridical Barriers (Regarding Legislation)

Juridical obstacles concern the issue of statutory provisions which are used as the basis for implementing decisions, especially regarding the basis for the judge's authority to determine forced money and administrative sanctions as stipulated in Article 116 of the Law on State Administrative Courts. The implementation procedure also encountered obstacles due to the absence of implementing regulations regarding its application. Yos Johan (2010), Utama also highlighted juridical factors as obstacles to enforcing the implementation of PTUN decisions. Some of these juridical factors can be concluded in the following details[8]

1) The system offered by the Administrative Procedure Code in enforcing decisions is based on the pattern of "moral compliance or legal awareness" (*law awarenees*), not on the pattern of "juridical compliance.
2) The enforcement system for implementing decisions is not placed in a system that ends in or is supported by a penetration as appropriate in civil and criminal justice, which is equipped with instruments that can force the Defendant / Officer to comply with or implement the decision.
3) The compensation implementation system regulated in PP. 43 of 1991 and Decree of the Minister of Finance of the Republic of Indonesia No. 1129 / KM.01 / 1991 concerning Procedures for Payment of Compensation, the implementation of the PTUN Decision is very complicated and is a rubber article because it is possible to postpone the payment of compensation for several budget years
4) Juridically, there is no balance between the plaintiff and the defendant, where the plaintiff's bargaining position is very weak when the defendant / official does not obey the decision

d. Obstacles Related to Legal Principles The difficulty of execution mentioned above is also inseparable from the influence of the principles of execution that are universally adopted by various countries, where the revocation or amendment of a decision can only be done by the official himself (*principle of contrarius actus*). In connection with the application of this principle, the defendant used the opportunity to postpone or even did not carry out the revocation of the decision ordered by the court.

Based on the application of the contrarius actus principle, no other official has the authority to revoke it, except for himself, so that the revocation will not be resolved by anyone except by the defendant himself. The use of this principle is motivated by a principle, that a TUN decision can only be issued or canceled by an authorized official or body, so that even if the superior of the official does not have the authority, he cannot issue / cancel the TUN decision which becomes the authority. his subordinates. This view resulted in a deadlock in the execution of the court's decision, while his superiors themselves could do nothing but advise the defendant to implement the verdict if he wished.

e. Barriers in terms of Limitations of authority of judges

Judges are also prohibited from carrying out executions, for example issuing decisions that are ordered in a verdict. This principle is often termed "Judges (courts) are not allowed to sit in government seats", meaning that judges may not take over the duties of officials to revoke / change a TUN decision. Therefore, the revocation is merely awaiting the official concerned.

f. Barriers Due to Changes in the Regional Autonomy System

Weaknesses in the execution of decisions of the State Administrative Court in the past, are also exacerbated by the reality of legal developments regarding governance and regional autonomy as regulated in Law No. 32 of 2004 concerning Regional Government. Where the position of the Provincial government and the district / city government no longer has a hierarchical relationship so that the Governor is no longer the superior of the

Regent / Mayor. This condition results in increasingly ineffective supervision by writing to the superior officials hierarchically

G. Obstacles Due to Disobedience TUN Officials The

voluntary execution system based on the awareness of TUN officials, according to Supandi, in his dissertation played a major role in obstructing the implementation of TUN court decisions. Regarding this, it was concluded that the Court's decision was not carried out due to several factors, among others (Supandi, 2005):

1. Low compliance and legal awareness of officials
2. There are interests of officials
3. There is a mistaken vision in the use of the authority of their office, where officials act or do not act not in the public interest, but act as if the public institution is considered their personal property.

In facing a dispute in court as litigants, both the plaintiff and the defendant must win and there are also losers. As the winning party, he really wants to carry out the execution of the Court's Decision so that he can enjoy the results of the victory he has won.

In reality, the plaintiff as the party who wins the case sometimes cannot enjoy the results of his handling because the defendant, namely a State Administration Officer or Agency, does not want to implement the State Administrative Court's Decision. Due to his disappointment as the party who won the case will try to find or take all efforts made so that the Official or State Administration Agency as the party who loses the case wants to implement the PTUN Decision

EffortsOfficials / Entities

That can be made against PTUN decisions that are not carried out by State AdministrativeEfforts that can be made against PTUN decisions that are not enforced by state administrative officials or entities are as follows:

1. Criminal Efforts

The party that wins the case can take criminal action by reporting the official or State Administration Agency as the reported party to the Indonesian National Police by applying or using the legal basis of Article 216 of the Criminal Code as the basis for the report.

That by using criminal measures it is hoped that officials or State Administrative Bodies who experience a criminal report can make it a deterrent effect to continue to respect and appreciate the TUN Court Decision which has permanent legal force (*Inkracht Van Gewijsdeuseful*) or at least serve as aexperience. valuable for not repeating his actions as a state administration official who should be an example or role model for the people who must obey the law.

On the other hand, the importance of criminal sanctions regarding judicial administration or contempt of court can be applied in an effort to establish self-respect and legal awareness of State Administrative Officials. The form of contempt of court includes the punishment of people who do not obey court orders which can undermine the power, dignity and honor of the court. From the results of a questionnaire to 100 people consisting of disputing parties and court visitors at the Ambon State Administrative Court in October 2015, the answer was 74.13% wanting the application of criminal sanctions for officials who do not comply with the PTUN decision.

2. Civil Efforts

In addition to the criminal efforts as mentioned above, the party who wins the case can also take civil measures by applying or using Article 1365 of the Civil Code as the basis for a lawsuit.[13] Whereas because the party winning the case has felt aggrieved due

to the actions of the State Administration Official who do not want to heed the TUN Court Decision which has permanent legal force, an application through a civil compensation lawsuit can be submitted through the District Court to test whether it is true that the State Administration official has committed an act against the law by the authorities (*onrechtmatige overheld daad*).

Imposing Administrative Sanctions

In addition to the imposition of penalties in the form of forced payments (*dwangsom / astreinte*), state administrative officials who do not carry out the obligations as ordered in the decision of the state administrative court which have permanent legal force (*in kracht van gewijsde*),
according to the provisions of Article 116 paragraph (4) Law Number 51 of 2009 concerning Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts as previously described, state administrative officials may be subject to administrative sanctions.

Administrative sanctions as regulated in Article 4 of Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials are as follows:

a) Light administrative sanctions;
b) Medium administrative sanctions; and
c) Heavy administrative sanctions.

Furthermore, the provisions of Article 81 of Law Number 30 of 2014 concerning Government Administration in conjunction with Article 9 of Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials regulate the forms of administrative sanctions that can be imposed. The provisions read:

1) Minor Administrative Sanctions as referred to in Article 4 letter a, are in the form of:
   a) verbal warning;
   b) written warning; or
   c) postponement of promotion, class, and / or rights to position.
2) Medium Administrative Sanctions as referred to in Article 4 letter b, are in the form of:
   a) payment of forced money and / or compensation;
   b) temporary dismissal by obtaining office rights; or
   c) temporary dismissal without obtaining office rights.
3) Heavy Administrative Sanctions as referred to in Article 4 letter c, are in the form of:
   a) permanent discharge by obtaining financial rights and other facilities;
   b) permanent dismissal without obtaining financial rights and other facilities;
   c) permanent dismissal by obtaining financial rights and other facilities and being published in the mass media; or
   d) permanent dismissal without obtaining financial rights and other facilities as well as being published in the mass media.
4) Other sanctions in accordance with the provisions of statutory regulations.

Every official may be subject to minor, medium and severe administrative sanctions depending on the severity of the offense from the official concerned. Administrative sanctions in the context of coercive efforts for state administrative officials to implement a state administrative court decision that has permanent legal force (*in kracht van gewijsdeseverity*), it must first be seen regarding theof violations by officials who do not

carry out the obligations ordered in the administrative court decision. a state with permanent legal force (*in kracht van gewijsde*).

According to the provisions of Article 7 of Government Regulation Number 48 of 2016 concerning Procedures for Imposing Administrative Sanctions on Government Officials, officials who do not implement court decisions that have permanent legal force, may be subject to moderate administrative sanctions. In more detail, the provision reads: Medium Administrative Sanctions as referred to in Article 4 letter b are imposed on Government Officials if they do not:

a) obtain approval from a superior official in accordance with the provisions of laws and regulations on the use of discretion which has the potential to change the budget allocation;
b) notify Supervisors of Officials before the use of Discretion and report to Supervisors of Officials after using Discretion in the event that the use of Discretion causes public unrest, emergencies, urges and / or natural disasters occur;
c) stipulate and / or make Decisions and / or Actions within a maximum period of 10 (ten) working days after the complete application is received by Government Agencies and / or Officials if the provisions of the laws and regulations do not specify a time limit for obligations;
d) stipulate a decision to implement the court decision no later than 5 (five) working days from the date the court decision is stipulated;
e) return money to the state treasury in the event that the Decree results in the payment of state money being declared invalid; or
f) carry out Legitimate Decisions and / or Actions and Decisions that have been declared invalid or canceled by the Court or the official concerned or the supervisor concerned.

CONCLUSION

1. Obstacles in the execution of decisions of the State Administrative Court based on Article 116 of Law Number 51 of 2009 are: Decisions, Obstacles in executing decisions are caused by State Administrative Officials are Regional Heads whose positions are Political Officials, Obstacles in executing decisions are caused by State Administrative Officials The accused are officials who accept the authority of a pseudo delegation, Obstacles regarding the understanding of state administration officials against the theory of the State of law and AAUPB, technical obstacles, juridical obstacles (regarding laws and regulations), obstacles related to legal principles, obstacles in terms of limited authority of judges, Barriers due to changes in the regional autonomy system, Obstacles due to disobedience of state administration officials. And third; Efforts that can be made against decisions of PTUN that are not carried out by state administrative officials / agencies such as Criminal Efforts with criminal reports and Civil Efforts by filing a civil suit.

   The role of the State Administrative Courts in the practice of resolving Government Administration disputes in Indonesia due to the absence of an executorial institution, as well as a strong legal basis, results in the decision of the State Administrative Court having no compulsion.

   The Law on State Administrative Courts also does not clearly and clearly regulate the issue of force of State Administrative Court decisions, so that the implementation of the Verdict really depends on the goodwill of the State Administrative Bodies or Officials in obeying the law. This situation is quite concerning, because the principle of the existence of a State Administrative Court, to place juridical control in government has lost its meaning in the Indonesian state administrative bureaucracy system. The decision or determination made by the PTUN is not only in the form of an execution decision, but also in the form of a non-executable (non-executable) decision, in the event that the PTUN decision is binding and

final (*final and binding*). The problem of this thesis research is what are the factors that cause the PTUN decision not to be executed (non-executable)? Number: 10 / G / 2015 / PTUN. ABN By the Mayor of Tidore Islands). Based on the results of the research that has been carried out, the answer is that: The factors that cause the decision or decision of the State Administrative Court to be unable to execute is due to the influence of changes in circumstances; factors of factual actions that occur; and the inconsistency factor between procedural law and material law. Whereas legal remedies against the decision of the PTUN that cannot be executed (non-executable), namely the plaintiff, in this case the winner of the case can file an appeal to the Supreme Court in accordance with the provisions of Article 30. Law Number 5 of 2004 concerning Amendments to the Law Number 14 of 1985 concerning the Supreme Court jo. Law Number 3 Of 2009 concerning the Second Amendment to Law Number 14 of the Year 1985 regarding the Supreme Court.

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