

Inter-Religious Marriage: A Comparison Analysis of Indonesian Law With Other Countries

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Abstract

Inter-religious marriage is not something new in Indonesia. Judging from the diversity of religions that exist, it does not rule out the possibility of inter-religious marriages. However, inter-religious marriage is still a polemic among the public because the Law of the Republic of Indonesia Number 1 of 1974 concerning Marriage, does not explicitly regulate and accommodate the problem of inter-religious marriage, especially after the enactment of Law Number 23 of 2006 concerning Administration Population, the opportunity to legalize inter-religious marriages seems to be wide open, namely with the availability of the option of submitting an application for interfaith marriages to the District Court to issue a stipulation allowing interfaith marriages and instructing Civil Registry office employees to record these interfaith marriages into Register of Marriage Registration. In the end, people often smuggle laws in ways that are not justified, for example by providing false information that they have changed religions and follow the religion of their partners. Or by carrying out marriages abroad which allow marriages of different religions, and then registering them at the civil registry office. This study aims to find out how Indonesian law views inter-religious marriages and how inter-religious marriages are regulated from a comparison of the laws of other countries, such as those in Canada, Singapore, England and the Netherlands. This study uses a statutory approach, namely an approach that is carried out by examining all laws and regulations that are related to the legal issues under study. The results of this study will provide input to Indonesian legislators which can be used as an improvement in regulations, especially provisions related to inter-religious marriage.

Keywords: *Interfaith Marriage; Reduced Inequalities; Comparative Civil Law; Peace and Justice.*

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Introduction

The practice of interfaith marriage in Indonesian society is still controversial. Indonesia as a country with the characteristics of a plural society that coexists, the high level of population migration, which is supported by advances in communication technology that facilitate interaction without knowing distance, causes interfaith marriage to be difficult to avoid.¹ Juridically, marriage arrangements in Indonesia are regulated in the Law of the Republic of Indonesia

¹ Achmad Nurcholish, *Memoar Cintaku: Pengalaman Empiris Pernikahan Beda Agama* (LKIS 2004).[6].

Number 1 of 1974 concerning Marriage which has been amended by Law No. 16 of 2019 (hereinafter referred to as the Indonesian Marriage Law).

In the provisions of Article 1 of the Indonesian Marriage Law, it is stated that "Marriage is a bond born between a man and a woman as a husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty Godhead". Thus, it can be interpreted that the marriage must be based on religious principles, as contained in Article 2 paragraph (1) of the Indonesian Marriage Law states that: "Marriage is valid, if it is carried out according to the laws of each religion and its beliefs". One of the principles of marriage adopted in Indonesia is to adhere to similar religions or beliefs and does not allow marriages of different religions or beliefs.

Hazairin asserted that in Article 2 paragraph (1) of the Indonesian Marriage Law that there is no longer any attempt to violate "the laws of his own religion" so for Muslims there is no possibility of marriage in violation of their religious laws, as for Christians, Hindus and Buddhists.² The marriage laws that apply to each of these religions have differences, but they do not conflict with each other.

Although the regulation regarding marriage in Indonesia has been regulated in Law No. 1 of 1974 and its amendments, it does not mean that the law regulates all aspects that have a relationship with marriage. This can be seen in the absence of interfaith marriage arrangements,. The existing provision is the concept of "mixed marriage" which accommodates the existence of marriages of different nationalities, not different religions or beliefs.

In fact, many people do interfaith marriages, but Indonesian law is unable to accommodate this. Then the efforts made by the couple, namely to carry out marriages abroad that allow for marriages of different religions or beliefs, then recorded in the Indonesian civil registry as a mere administrative requirement. This can be said to be legal smuggling. Based on the concept of international private law, legal smuggling is an act committed in a foreign country and recognized as

² Wantjik Saleh, *Hukum Perkawinan Indonesia* (Ghalia Indonesia 1978).[16].

legal in that foreign country.³ This action will be canceled by the forum or not recognized by the forum if the act is carried out in a foreign country with the aim of circumventing the *lex fori* law which would prohibit such an act from being carried out in the regional forum. The purpose of this action is to avoid unwanted legal consequences by the parties or to realize a desired legal effect. Supposedly the law in a country can accommodate the needs that exist in society, so that people do not need to look for “law of other countries” to legalize the marriage.

Laws are static, but they should be able to adjust the developments that exist in society. If a law cannot accommodate the needs of society, then the law (law) does not have binding enforceability. Therefore, an effort is needed to overcome the legal vacuum that exists in the Indonesian Marriage Law with the developments that exist in society.

Research Methods

This research is a legal research using a statutory approach and a conceptual approach. The data collection technique used in this study is library research, namely through tracing laws and regulations, documents and books, scientific papers that are in accordance with the object to be studied. The source of legal material in this study consists of primary legal materials and secondary legal materials. Primary legal material is legal material that is authoritative which means it has authority. Primary legal material is a legal material consisting of legislation, official records or minutes in the making of laws and decisions of judges. While the secondary legal material is in the form of all publications related to the law that are not official documents.⁴

The data analysis technique in this study is to collect all legal materials, select, clarify and compile in a normative form, which is then analyzed by systematic and grammatical interpretation methods.

³ Bayu Seto Hardjowahono, *Dasar-Dasar Hukum Perdata Internasional* (Citra Aditya Bakti 2013). [44].

⁴ Peter Mahmud Marzuki, *Penelitian Hukum* (Edisi Revisi, Kencana 2021).[141].

Discussion

Naturally, humans are destined to live in groups or referred to as zoon politician creatures. Man cannot live alone, he always needs others to grow and develop. Humans are living beings who have a tendency to live together with others. In modern civilization, to support the continuation of human life, each individual needs the presence of others in the form of cooperation, help, recognition and so on from birth to the world until death and return to the ground. The higher a person's mobility, the greater he needs the presence of others in his life. In life with the growing civilization of mankind, the needs of others are increasingly becoming needs, no one in this world is able to live alone without the help of others.

In modern civilization, the group life of human society begins with the formation of a nuclear family consisting of children, wives or husbands, then the increase of sons-in-law, in-laws, in-laws and so on until the form of an extended family; communities are formed ranging from close neighbors, distant neighbors to partners, nations that start from their position as ordinary citizens, officials and others. All of them are life forms that man lives from time to time, until the end of his life.

The family is the smallest institution in society, its core members consist of father, mother, and son. This institution is the foundation of a larger institution, namely the state. So the state is very interested in strengthening this family institution with a legal system, namely family law. The presence of man in managing the family becomes important, because family life along with the passage of time becomes more complicated, and complex. Such a complicated life can only take place either when it is based on the rules of life or the rules or norms of life. This order or norm is a rule that guides all activities of human life in order to achieve a good life.

The norms and rules that guide human life can be in the form of autonomous rules born from one's own society, such as customary rules, customary rules, and other social rules. In addition, there are also rules that come from outside society itself, so in this case it comes from the power that has the authority to form legal rules that carry out state duties. In modern society, these rules that come from

outside society are commonly referred to as positive legal rules, which are formed by bodies and institutions that have the authority to form laws.

One form of law that is external and comes from the state is the law that regulates the family, or what is referred to as family law. Family Law regulates legal relationships concerned with inbreeding kinship and marriage. The derivative of the family law system is the law of marriage, and in the modern system of life, marriage is carried out by the ordinances and requirements prescribed by law. One of the marriage arrangements by the state is the existence of an obligation to carry out marriage registration. Therefore, marriage arrangements including marriage registration are a form of state intervention in the civil jurisdiction, as a form of state interest to strengthen the foundation of the state.⁵

In Indonesia, formal juridically, marriage is regulated in the Law of the Republic of Indonesia No. 1 of 1974 which has been amended by Law No. 16 of 2019 concerning Marriage. In the provisions of Article 1 of the Indonesian Marriage Law, it is stated that: "Marriage is an inner birth bond between a man and a woman as husband and wife". According to Wantjik Saleh,⁶ with the 'inner birth bond' it is intended that the marriage is not only sufficient with the existence of a 'birth bond' or 'inner bond only' but must be both□ both. A 'birth bond' is a visible bond, that is, the existence of a legal relationship between a man and a woman to live together, as a husband and wife, which can also be called a 'formal bond'. This formal relationship is binding for himself, as well as for others or society. On the contrary, a 'bathin bond' is a relationship that is not formal, a bond that cannot be seen, but must exist because in the absence of a bathin bond, the bond is born will become fragile.

From the definition of marriage contained in Article 1 of the law, it can be concluded that marriage has juridical, social and religious aspects. The juridical aspect is found in the birth bond, which is a legal relationship between husband

⁵ M. Zamroni, *Prinsip-Prinsip Hukum Pencatatan Perkawinan Di Indonesia* (Media Sahabat Cendekia 2018).[2-4].

⁶ K. Watjik Saleh, *Hukum Perkawinan Indonesia* (Ghalia 1992).[14].

and wife, while the relationship that binds themselves as well as others or society is the social aspect of marriage. The religious aspect is the existence of terminology based on the One True Godhead. Furthermore, it can be seen in Article 2 paragraph (1) which states that: "Marriage is valid, if it is carried out according to the laws of each religion and its beliefs".

In connection with the enactment of the provisions of Article 2 paragraph (1) of the Indonesian Marriage Law, along with its implementing regulations, it can be assumed that the validity of marriage in Indonesia must meet the requirements for validity according to religious law and the conditions for validity according to the state. Based on this understanding, it appears that the state in matters of marriage also considers religious factors for its people. This is certainly very related to the role of religion in the life system of society, nation and state in Indonesia.

Just for information that based on data from the Indonesian Central Statistics Agency in 2020, Indonesia has a population of around 273.5 million, has 1,331 tribal categories, thousands of islands and various religions. Different religions are Islam, Protestant Christianity, Catholicism, Hinduism, Buddhism and Kong Hu Chu. This also causes Indonesia to be known as a multicultural country and is nicknamed *Bhineka Tunggal Ika* (Unity in Diversity).

Furthermore, in the provisions of Article 66 of the Indonesian Marriage Law stipulates that: "for marriage and everything related to marriage based on this law, the provisions that have been regulated in the *Burgerlijk Wetboek* (Indonesian Civil Code), *Ordonantie* in the Indonesian Christian Law (*Huwelijks Ordonantie* Christian Inlanders, *Staatsblad* 1933 Number 74), *Mixed Marriage Regulations* (*Regelings op de Gemengde Huwelijken*, *Staatsblad* 1898 No. 158) and other regulations governing marriage to the extent provided for in this law are declared invalid". Words to the extent that they have been set out in the "a *contrario*" manner, then "to the extent they have not been regulated" shall apply to the existing regulations.⁷ In the sense that the provisions that existed before the

⁷ R. Soetojo Prawirohamidjojo dan Marthalena Pohan, *Pluralisme Dalam Perundang-Undangan Perkawinan Indonesia*, (5th ed., Airlangga University Press 2012).[1-2].

enactment of the Marriage Law remain in force as long as this matter does not conflict and/or has not been regulated in the Marriage Law.

In Indonesia, the practice of interfaith marriage in society remains controversial, although Indonesia already has an Indonesian Marriage Law which is the legal umbrella in terms of marriage. The Indonesian Marriage Law in addition to laying down principles as well as providing a basis for marriage law which has been a handle and applies to various groups of Indonesian society.⁸

If viewed substantially and closely observed, in its implementation the Indonesian Marriage Law still has shortcomings, namely the absence of strict rules governing interfaith marriages. Whether interfaith marriage is permissible or prohibited and it is not implicitly written. However, explicitly the Indonesian Marriage Law regulates the validity of marriage if a religion is one of the legal requirements for marriage, which is related to an article in the Indonesian Marriage Law, which is carried out according to the law of each religion and its beliefs which are regulated in Article 2 paragraph (1). The same is also regulated in Article 8 sub f of the Indonesian Marriage Law explaining the prohibition of marriage, so to carry out marriage between people of different religions will largely depend on the provisions of the religious law adopted for the prospective husband and wife concerned.

So actually the Indonesian Marriage Law has left it entirely to the religious laws of each party as a determination of whether the marriage can take place or not. In Indonesia, interfaith marriage can be carried out by adhering to one of the ways either from religious law or the beliefs of one of the parties.⁹ This also cannot be a solution to the vacancy of the Indonesian Marriage Law if one of the parties does not want to convert.

The problem of interfaith marriage is not a problem that has just arisen in society. This debate over the validity of marriage has also been discussed in classical jurisprudence texts. In its fatwa, the Indonesian Ulema Council uses the

⁸ Asmin, *Status Perkawinan Antar Agama Ditinjau dari Undang-Undang Perkawinan No. 1 Tahun 1974* (Dian Rakyat 1986).

⁹ Soedharyo Soimin, *Hukum Orang dan Keluarga* (Sinar Grafika 2002).

terms mixed marriage and interfaith marriage. Although the term mixed marriage in the context of legislation in Indonesia has different meanings from the term marriage different gama, but both terms are used by the Indonesian Ulema Council in its fatwas that contain the same meaning. This can be seen in the fatwa on mixed marriages which contains the problem of religious differences between Muslims and non-Muslims. The fatwa on mixed marriages was issued on June 1, 1980, which contained two statements, namely: (a) an Islamic woman is not allowed to be mated with a non-Islamic man; (b) an Islamic man is not allowed to marry a non-Islamic woman.¹⁰ This fatwa once came out in response to the increasing public opinion towards the increasing number of inter-religious marriages (different religions).

At this time, there were also several couples who held interfaith marriages, including the following series of public figures: First, Nadine Chandrawinata who is Catholic and Dimas Anggara who is Muslim. The two couples had a wedding in Bhutan, Nepal on May 5, 2018. Second, Jennifer Kurniawan who is a Christian and Irfan Bachdim who is Muslim. The two had a marriage on July 8, 2011 in Stuttgart, Germany. Third, the couple Rio Febrian who is Christian and Sabria Kono who is Muslim. The two had a wedding in Bangkok, Thailand on February 3, 2010. Fourth, Nana Mirdad who is Christian and Andrew White who is Catholic. The two had a marriage on May 13, 2006 in Switzerland. Fifth, the couple Ari Sihasale is Catholic and Nia Zulkarnaen is an Islamic couple who held a wedding in Perth, Australia on September 25, 2003. Sixth, the couple Novita Angie who is Catholic and Sapto Haryo Rajasa who is Muslim held a marriage on June 29, 2001. Seventh, the Christian couple Frans Mohede and Amara who are Muslims held a wedding on December 1, 1999 in Hong Kong. Apart from the list of names above, there are also many non-celebrity couples who hold interfaith marriages.

Due to Indonesian law that cannot accommodate the needs of the community regarding the legality of interfaith marriages, the community made a legal breakthrough by conducting their interfaith marriages abroad to obtain legality

¹⁰ Rahmawati, 'Konstestasi Pemikiran Ulama Dalam Pembaruan Hukum: Studi Pada Fatwa Majelis Ulama Indonesia Tentang Perkawinan Beda Agama' (2016) 10 *Al-Manahij*. [31-42].

and then register it in the civil registry office in Indonesia. This is often done by the community, because the provisions of Article 2 of the Indonesian Marriage Law stipulate that marriage is valid if it meets two elements, namely: first, it is carried out according to their respective religions and beliefs; second, it is registered in the marriage registration agency.

If you look at the two cumulative conditions above, the first element, which is carried out according to their respective religions and beliefs for those of different religions cannot be fulfilled and facilitated by Indonesian law. Thus, if it continues, then the first problem that arises is the difficulty of which religious law is the reference for the marriage. Then the second problem that arises is which marriage registration institution is the institution for registering marriages of different religions. This is because the marriage registration institution in Indonesia is divided into two, namely the civil registry service to register marriages for those who are non-Islamic and the Office of Religious Affairs if the marriage is carried out by Muslims.

Even the potential for legal smuggling often occurs as an effort to meet the requirements of the marriage. Call it a Muslim who will have a marriage with someone who is a Christian. So here both to fulfill the first requirement that is to be carried out according to their respective religions and beliefs, then the christian is subject to islamic law, so it is as if he is a muslim, when he is not. The two entered into marriage at the Office of Religious Affairs because they were considered equally Islamic. Shortly after they have entered into marriage in the Islamic way, then those who are Muslims will submit to christian law and carry out marriages in the church, as a form of validity of their marriages that must be equally in the church. This becomes strange, because the religion that is adhered to becomes the subject of jokes and can be played to fulfill the laws made by humans (Indonesian law). It's not enough there, if the two of them someday turn out to have family problems and lead to divorce, which judicial institution will solve the problem? Again, in Indonesia, if marriage disputes for those who are Muslims will be resolved in religious courts (vide Law of the Republic of Indonesia No. 7 of

1989 as amended by Law No. 50 of 2009 concerning Religious Justice). Meanwhile, those who are non-Islamic in religion, marriage problems will be resolved in the district / general court (vide Law No. 2 of 1986 as amended by Law No. 49 of 2009 concerning General Courts).

The development of interfaith marriage has been researched by Herlambang Sayogyo¹¹ who said that there was a case in Surakarta City (Central Java, Indonesia) that there was a legal conflict between the decision of the Supreme Court of the Republic of Indonesia which allowed interfaith marriage and the Decision of the Constitutional Court of the Republic of Indonesia which rejected marriages of different religions. Judges have their own perspectives in responding to the clash of norms between the Supreme Court and the Constitutional Court. There are judges who state that the Indonesian Marriage Law does not contain any provision stating that differences in religion and/or beliefs between the future husband and wife are prohibitions on marriage as in line with Article 27. However, on the other hand, there are judges who prohibit interfaith marriages on the basis of the provisions of Article 2. Marriage is considered valid if according to the religion and beliefs of each prospective husband and wife is also valid. Therefore, every religion cannot legalize interfaith marriages, because all religions want their people to marry the same, which aims to keep the individual faith from being influenced by the teachings of other religions. Because all religions require that the future husband and wife must be of one religion, there is an avoidance of the law that should apply or can be said to be an act of legal smuggling, because the perpetrators of the smuggling want to be invalidated by a legal system because it will cause legal consequences that they do not want.

Wahyono Darmabrata mentioned that there are popular ways taken by couples of different religions so that their marriages can be carried out that are recognized by the state and society: asking for a court determination, marriages

¹¹ Mulyadi dan Yunanto Herlambang Sayogyo Muryoto Putro, 'Tinjauan Yuridis Perkawinan Beda Agama (Studi Kasus Perkara No. 87/Pdt.P/2015/PN.Skt)' (2016) 5 Diponegoro Law Review. [1-12].

are carried out according to each religion, for example, Hindu men marrying Muslim women are carried out at the residence of prospective wives who are Muslims and fulfill the wishes of the wife's family who are Muslim by saying two sentences of the Creed, but the muddy is performed again marriage according to hindu religious ordinances is housed in the family of a man who is Hindu.¹² It constitutes legal smuggling. Legal smuggling or *fraus Legis* (latin) is an act committed by a person in order to obtain certain legal consequences (rights) based on foreign laws which if based on their national law the consequences of the law will not be realized.¹³

Jane Marlen Makalew's research states¹⁴ that whether or not marriages of different religions can be carried out according to the religion in Indonesia, everything depends on the rule of law of each governing religion. Because in principle of each religion, strongly opposing the existence of interfaith marriages excluded on a certain matter can be allowed but in the case of such religious differences, both parties must be subject to the rule of law and which religious ordinances will be the choice for marriage to take place. Meanwhile, the Indonesian Marriage Law does not specifically regulate interfaith marriages in Indonesia, therefore interfaith marriages cannot be legalized according to the applicable law based on Article 2 paragraph (1) that the validity of marriage if it is carried out according to the laws of each religion and belief. So the decisions of the statute are returned to each of the governing religions. Except to fill the legal vacancy, the Supreme Court Decision according to Number: 1400 K / Pdt / 1986 provides a solution to the problem of interfaith marriage in Indonesia.

To avoid legal smuggling, it is necessary to reform the rules related to interfaith marriage in Indonesia as stated in Law No. 1 of 1974 and Law No. 16 of 2019. This again must be studied in more depth, especially regarding the establishment

¹² Wahyono Darmabrata dan Surini Ahlan Sjarif, *Hukum Perkawinan Dan Keluarga Di Indonesia* (Badan Penerbit Fakultas Hukum Universitas Indonesia 2004).[6].

¹³ Prasetyo Ade Witoko dan Ambar Budhisulistiyawati, 'Penyelundupan Hukum Perkawinan Beda Agama Di Indonesia' (2019) 7 Jurnal Pasca Sarjana Hukum UNS.[251].

¹⁴ Jane Marlen Makalew, 'Akibat Hukum Dari Perkawinan Beda Agama Di Indonesia' (2013) 1 Lex Privatum.[131-144].

of norms of rules that should contain juridical, sociological and philosophical foundations. This also needs to be related to international issues as mentioned in the Sustainable Development Goals (SDGs) launched by the United Nations, especially SDGs 5 (Gender Equality) and SDGs 10 (Reduces Inequalities) can be used as one of the guidelines in compiling improvements to the existing rules in the Indonesian Marriage Law. Legal comparisons with other countries also need to be considered by Indonesian legislators to form new norms and rules related to interfaith marriage. Countries that allow interfaith marriage based on the results of the author's research include Canada, Singapore, United Kingdom, and Netherlands.

Marriage law in Canada, Canada does not make religious equality a legal requirement for marriage. Thus, interfaith marriage is not a barrier. Legal marriage in Canada is: (a). different sex (b). have sexual ability (c). there is no relationship of blood or descent (d). not bound by a previous marriage €. there is an agreement.

Marriage law in Singapore, Singapore is one of the countries that allows interfaith marriages. Singapore is a secular country being neutral in matters of religion, and does not support religious people or non-religious people. Singapore claims that they treat all residents equally, even though their religion is different, and also states that they do not discriminate against residents of certain religions. Singapore also does not have a national religion.

The main requirement to be able to get married in Singapore is that the person concerned must stay in Singapore for at least 20 consecutive days. After fulfilling these requirements, the newlyweds can begin to take care of their administration online at the Registration for Married building. The Government of Singapore provides marriage services with online registration for both Singaporean citizens, permanent residents and foreigners 100%. In just 20 minutes registering with Singapore's marriage legislation at a maximum fee of 20 Singapore dollars, regardless of religious differences, guaranteed legal marriage certificates and can be accepted by any law in the world.

Marriage law in England, England adheres to a common law legal system that does not require religious equality for the parties who will enter into marriage.

Marriage is not just a religious matter so that in this way whatever religion the parties adhere to is ignored. People who have religion or no religion, can carry out civil marriages, and can be legally disabled by fulfilling established procedures.

Marriage law in the Netherlands, the Netherlands is a country that does not limit people who want to get married, even if they have different religions. This policy makes it easier for Dutch people who want to get legal recognition before the law. In the Netherlands, before the wedding couple gets married in a religious manner, for example in a church, mosque, and others, they must first have a civil marriage. This is because the state only recognizes civil marriages.

Conclusion

Marriage can be interpreted as an inner and outer bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family or household based on Belief in One Almighty God. Therefore, marriage is valid if it is carried out according to the laws of each religion and belief and has been recorded according to the applicable laws and regulations. The regulation of interfaith marriage problems is felt to be less strict, because the Marriage Law does not explicitly and clearly state that interfaith marriages are prohibited. The marriage law only regulates the legality of marriage where a marriage must be valid according to the laws of each religion and belief Article 2 paragraph (1) and also in Article 8 letter f concerning the prohibition of interfaith marriage only states that marriage is prohibited between two people who have a relationship that is prohibited by their religion or other regulations. There is not a single article in the Marriage Law which explicitly states that interfaith marriages are prohibited.

In this case it can be concluded that, Law in Indonesia has not been able to accommodate the needs of the community related to different religious marriages. In the end, people often smuggle laws in ways that are not justified, for example by providing false information that they have changed religions and follow the religion of their partners. Or by carrying out marriages abroad which allow marriages of different religions, and then registering them at the

civil registry office in Indonesia to prevent children born from being born out of wedlock. Arrangements regarding interfaith marriages in Indonesia must be strictly regulated in statutory regulations, so as not to create a legal vacuum which results in public confusion related to interfaith marriage issues. Laws regulated by legislators must be able to accommodate the needs that exist in society as long as they do not conflict with the basic philosophy of Indonesia, namely Pancasila. Developments in the international world as stated in the Sustainable Development Goals (SDGs) proclaimed by the United Nations, especially SDGs 5 (Gender Equality) and SDGs 10 (Reduces Inequalities) can be used as a guide in preparing improvements to the existing rules in the Marriage Law Indonesia.

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