



Analysis of the constitutional court's decision number 116/puu-xxi/2023 concerning the parliamentary threshold as landmark decisions

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ABSTRACT

This study analyzes the decision of the Constitutional Court Number 116/PUU-XXI/2023 regarding the parliamentary threshold as landmark decisions. This decision is evaluated whether it meets the criteria as landmark decisions. The purpose of this study is as a form of examination to find out whether the Constitutional Court decision No. 116/PUU-XXI/2023 can be said to be a landmark decision. This research uses a normative juridical method. The legal tools and materials used in this study include official documents related to the Constitutional Court decision Number 116/PUU-XXI/2023, including the text of the Constitutional Court's decision and legal arguments submitted by the parties involved in the dispute. In addition, this research will also refer to laws, constitutions, and other legal documents that are relevant in the context of constitutional law and politics in Indonesia. The data collection method used in this study is a literature study. The results of this study show that the Constitutional Court's decision Number 116/PUU-XXI/2023 cannot be said to be a landmark decision because it only meets three criteria. The first criterion does not contain new legal principles, namely in the judge's ruling stating that article 414 paragraph 1 of the conditional constitution, that the 4% parliamentary threshold remains in effect in the 2024-2029 elections, this means that there is no new legal principle. The new legal principle will apply in the 2029 House of Representatives elections and subsequent elections, as long as changes have been made. In the third criterion, the decision does not invalidate the entire law because in this case the election law is still valid, but the judge declared article 414 paragraph 1 of the constitution conditional.

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1. Introduction

Important decisions known as *landmark decisions* are often produced in situations where existing regulations are inadequate or there is a need for justice that cannot be met by applicable laws. These *landmark decisions* were then accepted by the public as part of the evolving application of

the law. In the context of the Constitutional Court, *landmark decisions* have an important role because they not only create new legal precedents but can also change the interpretation of existing laws. These decisions are often turning points in legal history and have far-reaching implications not only in the legal context, but also in politics, society, and economics.

One of the main characteristics of *landmark decisions* is that they often appear in important disputes related to the constitution of a country. For example, human rights issues, restrictions on government power, and the constitutionality of government laws or policies are topics that are often taken into consideration in such decisions. As a result, these rulings brought about significant changes in the legal and political system, shaped new views on the rights and obligations of citizens, and defined the boundaries of power between branches of government.

Amran Suadi defines *landmark decisions* as important decisions that provide legal certainty to certain issues submitted to the court and have permanent legal force, without being regulated by previous regulations. Although some equate *landmark decisions* with jurisprudence, there are important differences between the two. Jurisprudence is a decision that is often followed by other judges in similar cases, while *landmark decisions* are new decisions that have not been followed by another judge in the same case. Henry Campbell Black added that *landmark decisions* are court decisions that significantly change the applicable law. A decision can be considered a *landmark decision* if it can significantly change existing legal norms.

In the context of the Constitutional Court of Indonesia, several monumental and fundamental decisions in upholding the 1945 Constitution can be categorized as *landmark decisions*. To meet these criteria, a ruling must include new legal principles, provide a constitutional solution to the stagnation of constitutional practice, or strike down the entire law. The decision must also have a constitutional strategic value that changes or restores the interpretation of the applicable norms under the constitution, as well as contains constitutional norms that are not absorbed by law but are declared by the Constitutional Court through *ratio decidendi*. According to Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, the Constitutional Court has the authority to adjudicate constitutional cases directly and finally, with decisions that are binding and cannot be appealed. This is also regulated in Article 10 paragraph (1), which states that the decision of the Constitutional Court is final and immediately takes effect as a permanent law since it was announced, without the possibility of further legal remedies. In addition, Article 47 of the Constitutional Court Law emphasizes that the decision of the Constitutional Court has permanent legal force since it was promulgated and cannot be changed through legal remedies.

In the process of making decisions, the Constitutional Court, which consists of nine judges, often faces differences of opinion. If the difference relates to different substances or arguments, this can affect the verdict and is referred to as a different opinion. On the other hand, when there is a difference in the argument but the decision taken remains the same, it is called a common opinion or agreement. The study of the Constitutional Court's decision Number 116/PUU-XXI/2023 concerning the parliamentary threshold is a study that explains the *Landmark Decisions* of the Constitutional Court of Indonesia which sets the parliamentary threshold. This study explains the development of law in Indonesia related to the parliamentary threshold, which is about the number of people's representatives needed to negotiate with the House of Representatives.

In understanding the background of Constitutional Court decision Number 116/PUU-XXI/2023, it is important to look at Indonesia's political history. Since the reforms in 1998, Indonesia has sought to strengthen its democratic system, which includes the electoral process and the organization of political parties. During this period, Indonesia's political system underwent significant developments, including arrangements related to parliamentary thresholds.

The parliamentary threshold in the context of the Constitution refers to the minimum requirement of votes required for a political party to obtain a seat in parliament. Controversy

often arises around the magnitude of this threshold. In Indonesia, the debate around parliamentary thresholds reflects the conflict between broader democratization interests and political stability. Some have advocated the use of parliamentary thresholds as a means to prevent excessive political fragmentation and ensure government stability, while others see it as an undemocratic restriction on political participation.

The parliamentary threshold in Indonesia has undergone various changes over time. In the 2009 elections, the threshold was set at 2.5%, which was an initial step taken to simplify the limits of parties that could enter parliament, in the hope of improving the effectiveness and efficiency of legislative performance. Then, in the 2014 elections, this threshold was raised to 3.5%. This increase reflects the government's efforts to further tighten the selection of parties that are likely to gain a place in the DPR. This threshold increase is expected to reduce political fragmentation and strengthen political stability in Indonesia.

In accordance with Law No. 7/2017, the threshold was raised again to 4% in the 2019 elections. The setting of a threshold of at least 4% aims to further emphasize efforts to simplify political parties in parliament, while encouraging parties to expand their support base in the community. With a higher threshold, it is expected that political parties will make more efforts to attract wider support, resulting in stronger and more effective representation in parliament. Overall, the determination of the parliamentary threshold plays an important role in limiting the threshold of the number of political parties that can enter parliament. By setting a threshold, only parties that achieve a certain percentage of the vote can gain seats in parliament.

The Constitutional Court's Decision Number 116/PUU-XXI/2023 regarding the parliamentary threshold. is a very important decision in the development of a country's constitutional law. The question of whether these decisions can be categorized as monumental or *landmark decisions* becomes relevant given their impact and implications on the political and legal systems. Changes in the interpretation or application of political participation requirements can have significant consequences on the balance of power, political representation, and the rights of citizens in a democratic country. This background is reinforced by the fact that Constitutional Court rulings often have far-reaching impacts on society, politics, and government. The decision can affect internal political dynamics, political stability, and the sustainability of the legal system and democracy as a whole. Therefore, to understand the implications and relevance of the Constitutional Court's decision on parliamentary thresholds, it is important to conduct an in-depth analysis of the nature and characteristics of the decision, as well as to understand whether it meets the criteria as a monumental decision or *landmark decision*. Thus, this background becomes the basis for research that aims to explore and analyze the significance of the decision in the context of the development of constitutional law. The structure of political parties, the general election process, political representation, and overall political stability. In addition, the analysis could also address the diverse views of stakeholders related to the ruling and how it could shape further debates about the direction of Indonesia's democracy.

By understanding this background comprehensively, readers will be able to grasp the context necessary to understand the significance of the Constitutional Court decision Number 116/PUU-XXI/2023 concerning the parliamentary threshold as a landmark decision. This Constitutional Court decision stipulates that the number of people's representatives needed to negotiate with the House of Representatives is 200 people's representatives. This study also explains the development of law in Indonesia related to the parliamentary threshold, which is about the number of people's representatives needed to negotiate with the House of Representatives. This Constitutional Court decision stipulates that the number of people's representatives needed to negotiate with the House of Representatives is 200 people's representatives. The Constitutional Court emphasizes the importance of obeying and upholding the law in every situation. The purpose of this minimum representation measure is to ensure that the negotiation process runs smoothly and without complications, so that all parties can participate effectively in the formulation of proposals. Therefore, the Constitutional Court's

decision to set 200 as the minimum number of representatives is a strategic method to ensure that the basic principles of the constitution are upheld and effectively applied in Indonesia's system of government. Explains the development of law in Indonesia related to the parliamentary threshold, which is about the number of people's representatives needed to negotiate with the House of Representatives

As such, it is important to analyze the background of this decision, which includes aspects of political history and the evolution of constitutional law in Indonesia. Decisions regarding parliamentary thresholds have not only legal but also political implications, especially about the stability of government and political representation. An in-depth analysis of the Constitutional Court's decision on the parliamentary threshold is expected to provide a better understanding of whether the decision meets the criteria as a *landmark decision*.

2. Method

This research utilizes a normative legal approach, which focuses on analyzing the applicable law, including statutes, legal principles, and legal doctrines, as well as legislation. This method utilizes a normative juridical approach, which refers to existing laws and regulations. The object of research is the decision of the Constitutional Court Number 116/PUU-XXI/2023 on the parliamentary threshold. This research aims to analyze the legal basis of the decision, its impact on the political system and democracy in Indonesia, as well as responses from various parties.

The tools and materials used in this research include official documents of the Constitutional Court's decision, laws, constitutions, and other relevant legal documents. In addition, this research uses content analysis which is used to analyze communication systematically, objectively and quantitatively. This research also refers to previous decisions of the Constitutional Court, legal literature and academic journals to provide additional context and analysis.

The research procedure began with data collection from various sources, including the text of the decision, arguments from the parties involved, as well as relevant literature. Next, legal analysis is conducted. The data collected will be analyzed in depth using a constitutional law analysis approach with systematic interpretation. This will involve unpacking the legal reasoning in the Constitutional Court's decision, identifying the arguments used, as well as interpreting the legal implications of the decision and to discover the legal principles on which the judges based their decision. In addition, the research will analyze the political, social and constitutional implications of the Constitutional Court's ruling on Indonesia's political system and democracy. This will include an evaluation of its impact on political party structures, the electoral process and overall political stability. The results of the analysis will be compiled in the form of a research report that presents the findings, analysis, and conclusions of the research in this case a scientific work in the form of a journal.

3. Analysis and Results

Following its authority and responsibility, the Constitutional Court in its function as a judicial institution plays a role in upholding justice. Based on the 1945 Constitution of the Republic of Indonesia. The five main functions of the Constitutional Court are as follows: to test laws against the Constitution, to resolve disputes over authority between state institutions regulated by the Constitution, to resolve disputes about the results of general elections, and to give opinions to the House of Representatives on impeachment.

Due to its status as a constitutional judicial institution, the Constitutional Court has significant differences compared to the general courts. The decision taken by the Constitutional Court is final and binding and applies to all parties by the principle of "*erga omnes*" (generally applicable). The decision of the Constitutional Court has legal implications and must be obeyed like the law.

Landmark decisions of the Constitutional Court refer to important decisions issued by the Constitutional Court of Indonesia that have a significant impact on the law and society. Landmark *decisions* are legal decisions that create *precedents* by changing the interpretation of the law or establishing case law for certain issues.

Regarding the parliamentary threshold, where the parliamentary threshold refers to the minimum number of votes that must be achieved by political parties participating in the election to participate in the distribution of seats in the House of Representatives and the Regional House of Representatives. Political parties that do not meet the threshold requirements cannot enter parliament, thus reducing the potential for conflict between the executive and legislative institutions that could disrupt the presidential system. The parliamentary threshold also plays a role in determining the proportionality of the election results. Political parties that meet the threshold will get seats in the House of Representatives based on the votes obtained.

Constitutional Court Number 116/PUU-XXI/2023 regarding parliamentary thresholds. The analysis identifies several key aspects of the ruling, including the existence of new legal principles, constitutional solutions to the stagnation of the legal system, annulment of laws, changes in the interpretation of legal norms, and the application of constitutional norms that are not absorbed by law. In this case, no new legal principle was found, because the Constitutional Court upheld Article 414 paragraph 1 and affirmed the role of negative *legislator*. This ruling provides a conditional constitutional solution, affirming the interpretation by the Constitution, but does not invalidate the entire related law. The court also used the judge's perspective to assess the applicant's provisions and postulates, showing that constitutional norms that are not absorbed by law are still recognized through *ratio decidendi*.

3.1. New Legal Principles

The Constitutional Court acts as an institution that tests the constitutionality of laws with a passive approach or *negative legislature*. In this capacity, the Constitutional Court does not actively seek errors in the law but only assesses constitutionality based on the application submitted. New legal principles refer to the occurrence of substantial changes in the interpretation or application of law that not only strengthen or confirm existing practices but also result in significant changes in the understanding of the law itself. A new legal precedent occurs when the Constitutional Court provides a new interpretation of the relevant constitutional rules or norms.

In the development of the Constitutional Court's decisions, there are often difficulties in reviewing the Law because the Law is prevalent in having characteristics that are widely described. As a result, in the practice of the Constitutional Court, there are different rulings. Namely: a) *Conditionally Constitutional*. In the context of the Constitutional Court's decision, a Conditional Constitution refers to a decision that states that a policy stipulated by law is considered not to be contrary to the constitution, as well as the regulations of state institutions, which apply it according to the interpretation of the Constitutional Court regarding its constitutionality. If these conditions are not met or if a state institution gives a different interpretation, the provisions of the Constitutional Court law may reconsider the issue. b) *Conditionally Unconstitutional*. A decision stating that the application is accepted with a record, where the regulation is deemed unconstitutional for some reason, is called a conditional unconstitutional judgment. In Decision Number 116/PUU-XXI/2023, the Constitutional Court ruled that Article 414 paragraph 1 regarding the parliamentary threshold for the 2024 election was declared conditionally constitutional. This decision confirms that the 4% threshold provision remains in effect until the 2024 elections because it is considered a legislative policy that must be maintained to maintain the stability of the electoral system.

Thus, there has not been any application of new legal principles applied in this context, existing legal principles are still maintained. However, it is expected that new legal principles will come into effect in the 2029 elections if lawmakers make the necessary changes to adapt to the needs

of better law and justice. This corresponds to the initial purpose of the formation of the Court, where judges do not actively search for faults in the law, but only assess offenses based on the application filed. Every application must be processed immediately, and if the judge is actively looking for fault on his own, it can show that the judge is overstepping his role and creating a conflict with the legislature as a lawmaker.

3.2. Decisions that Provide a Constitutional Solution to the Stagnation of Constitutional Practice and the Legal System

The Constitutional Court functions as the guardian of the Constitution and is responsible for upholding judicial principles to ensure substantive justice in each of its decisions. Substantive justice can be measured by the extent to which the Constitutional Court's decision is accepted and considered fair by all parties involved. In the context of protecting constitutional rights, the Constitutional Court is expected to provide significant constitutional solutions to problems that exist in constitutional practice and the legal system.

The constitutional solution provided by the Constitutional Court can bring significant changes in the understanding and implementation of constitutional law related to political participation. For example, the Constitutional Court may decide to lower the voting threshold, allowing small parties or minorities to more easily gain political representation in parliament. This can reduce the injustices in the political system that may occur due to too high a vote threshold. In terms of the legal system, the constitutional solutions provided by the Constitutional Court can help ease legal uncertainty that may arise due to ambiguities or contradictions in existing regulations. Clarification of rules related to political participation can increase public confidence in the legal system and increase justice in the political process.

Decision Number 116/PUU-XXI/2023 is an example where the Constitutional Court granted part of the application highlighting the injustice in the election law, which is considered to have caused a violation of the applicant's constitutional right to be treated equally before the law. The Constitutional Court judge acknowledged that some provisions in the election law need to be adjusted to ensure the protection of the constitutional rights of all citizens. This decision is expected to improve existing legal provisions and lead to the implementation of fairer elections following democratic principles. The Constitutional Court gave directions so that existing provisions could be improved before the 2029 election to ensure equality and justice in the future.

In the Constitutional Court Decision Number 116/PUU-XXI/2023, the judge granted part of the Petitioner's application highlighting the loss of constitutional rights to be treated equally before the law. The petition emphasizes that some provisions in the election law have caused injustice to the applicant and his group. The judge acknowledged that there are aspects of the law that need to be adjusted to ensure that the constitutional rights of all citizens are protected and treated fairly. In the end, the Constitutional Court's decision Number 116/PUU-XXI/2023 became unimportant in efforts to improve the electoral system in Indonesia. With this conditional decision, the Constitutional Court not only acknowledges the violation of constitutional rights but also provides concrete directions to improve existing legal provisions, so that future elections can run more fairly and under the principles of true democracy. In response to this violation, the judge gave a conditional verdict for the 2029 election and beyond. These rulings state that the current provisions can remain valid for the 2024 elections but must be amended or adjusted before the 2029 elections to be under justice and equality before the law. By making a conditional ruling, the Constitutional Court allows lawmakers to improve existing provisions and ensure that future election rules no longer contain discriminatory or unfair elements.

3.3. Cancellation of the Entire Law

The Constitutional Court has the authority to test laws against the Constitution through legal review, a task that reflects its role as a "guardian of the Constitution." In this case, the

Constitutional Court examines articles, paragraphs, or entire laws to ensure their conformity with the 1945 Constitution. The Constitutional Court can revoke or annul laws that are considered unconstitutional, but in Decision Number 116/PUU-XXI/2023, the Constitutional Court decided that Article 414 paragraph 1 of the Election Law remains valid. The judge stated that this provision does not contradict the 1945 Constitution, but also emphasized the importance of adjustments to ensure justice in the future. The Constitutional Court considers that although the parliamentary threshold provisions are constitutionally valid, their implementation must be carried out on the principles of justice and equality. Therefore, the Constitutional Court provides an opportunity for lawmakers to make necessary improvements ahead of the 2029 election so that this provision can be applied fairly and non-discriminatory.

In the Constitutional Court's decision Number 116/PUU-XXI/2023, the judge ruled that the Election Law remains in force, including Article 414 paragraph 1 which is the focus of the application. The judge considered that the article, in its existing form, does not contradict the 1945 Constitution of the Republic of Indonesia (1945 Constitution). However, the judge also acknowledged that constitutional issues need to be resolved for future elections, to ensure that the constitutional rights of all citizens are fulfilled.

Article 414 paragraph 1 of the Election Law regulates the parliamentary threshold, which specifies the minimum percentage of votes that a political party must obtain to gain a seat in parliament. The judge stated that although this provision is constitutionally valid, its application must take into account the principles of justice and equality before the law. Therefore, although the article was not removed or amended for the 2024 elections, the court ruled that there was a need for adjustments for the 2029 elections and beyond. By maintaining the enactment of Article 414 paragraph 1, the Constitutional Court recognizes the importance of parliamentary thresholds in creating political stability and reducing the fragmentation of political parties in parliament. However, the Constitutional Court also emphasized that this provision must be implemented fairly, so that no group or individual feels discriminated against or loses their constitutional rights. Judges allow legislators and policymakers to improve and adjust these provisions to make them more inclusive and fairer, ahead of the 2029 elections.

3.4. Decisions That Have Strategic Constitutional Value, Change Interpretations Against Applicable Norms or Restore Interpretations under the Constitution

The Constitutional Court has the responsibility to safeguard the Constitution and ensure the consistent application of constitutional law. The 1945 Constitution gives the Constitutional Court the authority to maintain the constitution. Upholding the Constitution in the sense of "upholding law and justice" or as judicial law is the definition of "guarding the Constitution". Because the 1945 Constitution is the basic law that is the foundation of the legal system in Indonesia. In this situation, the Constitutional Court has a constitutional position, authority, and responsibility to ensure that constitutional law is applied.

The Constitutional Court's decision can change or reverse the interpretation of the law to adjust to constitutional principles. A ruling that changes the interpretation of law occurs when the Constitutional Court finds that the interpretation or application of the applicable law is not under constitutional principles. This change in interpretation aims to overcome injustices or gaps that arise due to previous interpretations. The Constitutional Court has the authority to make a final and binding interpretation so that this decision is a legal reference that must be followed by all state institutions and related parties. Meanwhile, the Constitutional Court's decision that restores the interpretation of the law aims to restore the interpretation of the law to an understanding that is considered more under the law. In Decision Number 116/PUU-XXI/2023, the judge stated that Article 414 paragraph 1 is conditionally constitutional. This means that even though this provision does not contradict the 1945 Constitution, its implementation must be carried out under certain conditions to remain under the principles of constitutional justice. This decision affirms the role of the Constitutional Court in directing the

implementation of laws to ensure that their implementation is in line with constitutional principles, prevent discrimination, and safeguard constitutional rights. By stipulating certain conditions, the Constitutional Court returns the interpretation of these provisions to the basic principles of the Constitution, ensuring justice and equality in the application of the law.

The judge acknowledged that Article 414 paragraph 1, which regulates parliamentary thresholds, is essentially under the Constitution. However, the implementation of this article requires adjustments so as not to eliminate the constitutional rights of citizens to be treated equally before the law. By establishing the article as conditionally constitutional, the judge provided clear guidelines on how this provision should be applied to meet the standards of constitutional justice.

3.5. Decisions Containing Constitutional Rules That Are Not Absorbed by Law but Delivered by the Constitutional Court through *Ratio Decidendi*

Ratio decidendi refers to the basic reasons used by judges in making legal decisions, and in the context of the legal system, this is an important consideration that forms the basis of a case's decision. This concept evolved from the *Anglo-Saxon* legal tradition of applying a common *law system*, where the judge's decision at one time could be binding in the future. In considering a case, judges need to pay attention to existing social conditions so that their decisions are relevant and can be followed by judges.

In Decision Number 116/PUU-XXI/2023, the judge used extensive considerations, combining the interpretation of the law with relevant social conditions. The judge considered the applicant's argument and realized that the provision regarding the parliamentary threshold relates to the constitutional right to be treated equally before the law. Nonetheless, the judge acknowledged that the determination of the threshold was a legislative policy, and ruled that Article 414 paragraph 1 was conditionally constitutional. The judge rejected the petitioner's provision but stated that this provision must be corrected by lawmakers to ensure justice. Thus, this decision reflects how the Constitutional Court uses *ratio decidendi* to assess and establish constitutional principles, providing guidelines for lawmakers to adjust provisions to maintain equality and fairness in the implementation of elections. The judge also considered the arguments submitted by the applicant. The petitioner argued that the provision regarding parliamentary thresholds, as set out in Article 414 paragraph 1, had led to the loss of the constitutional right to be treated equally before the law. The judge admitted that there were strong reasons in the postulate of the applicant's application. However, the judge also considered that the determination of the parliamentary threshold percentage is a policy that is the authority of the lawmakers, namely the legislature. Therefore, the judge in his ruling stated that Article 414 paragraph 1 is conditionally constitutional if it has been amended by the lawmakers.

4. Conclusion

Based on the analysis of the Constitutional Court Decision Number 116/PUU-XXI/2023, it can be concluded that overall, the Constitutional Court Decision Number 116/PUU-XXI/2023 has an extraordinary impact such as providing critical legal clarification, this decision provides legal clarification regarding the parliamentary threshold, which was previously a source of license for political parties and legislative candidates. By establishing a constitutional threshold, the Constitutional Court reduced the potential for legal conflicts that could arise in the future. This creates important stability in Indonesia's electoral and political system. regulating the balance of political parties, by setting a parliamentary threshold, this decision serves to regulate the balance between large and small parties. The threshold encourages smaller parties to strategize better for elections, creating a more competitive political system. This is important for creating fairer representation in parliament. As well as, changes in political dynamics, this ruling has the potential to change the political dynamics in Indonesia. By setting a clear

threshold, smaller parties may seek to collaborate or form allied strategies to qualify for the threshold, thus creating a more dynamic and diverse political situation.

However, despite having a tremendous impact, Constitutional Court Decision Number 116/PUU-XXI/2023 cannot be said to be a landmark decision. This decision only fulfills the criteria for *landmark decisions*, namely providing constitutional solutions, restoring interpretation in accordance with the constitution and decisions containing constitutional norms that are not regulated by law but are stated by the Constitutional Court through *ratio decidendi*. The criteria that are not met to be said as landmark decisions are the first criterion that does not contain new legal principles, namely in the judge's ruling that Article 414 paragraph 1 is conditionally constitutional, that the 4% parliamentary threshold will still apply in the 2024-2029 elections, meaning that this shows that there is no new legal principle. New legal principles will apply in the 2029 House of Representatives elections and subsequent elections, to the extent that changes have been made. In the third criterion that the decision does not invalidate the entire law because in this case the election law still applies, especially Article 414 paragraph 1, the judge stated that it was not contrary to the Constitution, but the judge decided that the petition was well-founded, so that Article 414 paragraph 1 was said to be conditionally constitutional.

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