



THE BUSINESS DISPUTE RESOLUTION IN ISLAMIC LAW: METHODS AND APPROACHES TO SUBSTANTIVE JUSTICE

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Abstract

This research explores the methods and approaches to resolving business disputes within the framework of Islamic law, with a focus on substantive justice. Islamic law emphasizes not only the formal legality of decisions but also the moral and ethical dimensions that ensure fairness and equity. The resolution of business disputes in Islam is primarily guided by the principles outlined in Al-Qur'an, Hadith, ijma' (consensus), and qiyas (analogy), which provide a comprehensive legal framework for addressing issues in business transactions. The type of research used is normative legal research method. This research discusses various dispute resolution methods such as negotiation, mediation, and arbitration, all of which are aimed at achieving a fair and just outcome for the parties involved. The research highlights the importance of evidence in the arbitration process, noting that Islamic law values testimony, written contracts, confessions, and thorough investigations to establish the truth. Furthermore, the role of arbitrators in ensuring impartiality and objectivity in the decision-making process is crucial in maintaining justice. The concept of substantive justice in Islamic dispute resolution seeks to restore the rights of the aggrieved party and ensure that the compensation or restitution is fair, considering both material and non-material damages. This approach differs from procedural justice by focusing on the deeper ethical aspects of fairness, aiming for a holistic resolution that upholds the dignity and rights of all involved. In conclusion, resolving business disputes within Islamic law is not merely a matter of procedural correctness but a comprehensive process aimed at achieving true justice, where the ethical, moral, and legal dimensions are harmonized. This ensures that all parties receive a fair outcome, respecting their rights and maintaining harmony within the community.

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I. INTRODUCTION

Disputes are inevitable in an increasingly complex and interconnected business environment. Disputes can occur in various forms and situations between companies and companies, consumers, or governments. To maintain harmonious business relationships, effective, and fair dispute resolution is also important for economic stability and social justice (Qutrunnada et al., 2024). Due to the fact that Indonesia is a country with the largest Muslim population in the world, Islamic law is very important for various aspects of life, including in the fields of law and business. In resolving business disputes, principles such as fairness, transparency, and ethics can help. Several times, Islamic law has been incorporated into the country's legal system and used as the basis for dispute resolution through sharia courts. Business dispute resolution is a complex process and often requires a flexible and inclusive approach. Resolving disputes through formal legal channels is often time-consuming and expensive. As a result, options such as mediation and arbitration are becoming increasingly popular, especially in the business world (Khoirunnisa, Dede, Wagianto, 2024). Islamic business is increasingly important as an impact of globalization and rapid development in the economic sector. In the current era of globalization and modernization,

conflicts between the parties involved are almost inevitable. This is because business activities are increasing and transactions, especially in Islamic banking, are becoming more common. Any type of disagreement that arises always requires effective and appropriate action. In most cases, dispute resolution is usually achieved through litigation in court, where the parties involved are likely to have conflicting positions with each other (Pratiwi et al., 2024). In a business environment, resolution through legal channels like this is often undesirable. As a result, this model is only recommended as a last resort when other options do not produce a satisfactory solution. Global dynamics have driven rapid and complex economic growth that has resulted in various types of business cooperation. When someone cannot meet their own needs, others can meet them through business or trade (Siregar et al., 2024).

In Indonesia, the use of Islamic law in resolving business disputes is not a new phenomenon. For example, the Religious Courts in Indonesia have handled various cases related to Islamic business transactions. Principles of Islamic law such as justice, transparency, and ethics play an important role in resolving these disputes. There are challenges and obstacles in the application of Islamic law in resolving business disputes that remain. For example, a lack of understanding of the principles of Islamic law in the context of modern business can cause difficulties in its application. In addition, coordination between the national legal system and the principles of Islamic law requires special attention to ensure consistency and effectiveness (Gojali, 2023).

Disputes can be resolved out of court (out settlement court) and can be resolved in court (in settlement court). An example of dispute resolution outside the court is a dispute regarding sharia economics that can be submitted and resolved at the National Sharia Arbitration Board (BASYARNAS) with the applicant being Bank Muamalat and the customer as the respondent (Horah & Hariyanto, 2021). The dispute concerns a breach of contract by the respondent. Examples of settlements through the courts such as business or trade disputes can be resolved in the Commercial Court at the District Court or in the Religious Court for Muslims. The enactment of Law Number 7 of 1989, Indonesian Muslims are increasingly agitated to implement Islamic law (Djawas et al., 2022). This is marked by, among other things, the emergence of an Islamic economic movement to replace the conventional economy based on the interest system (*ribawi*) which is considered unfair and exploitative. So that at the end of 1991 the idea of forming a sharia-based financial institution in the form of a bank emerged. This then became the momentum for the spread of sharia-based economic activities.

The importance of this research is also driven by the rapid growth of the sharia industry in Indonesia, including banking, insurance, and investment that operate based on the principles of Islamic law. Dispute resolution in this context requires an approach that understands and respects sharia principles, as well as coordinates with national laws and regulations. This article seeks to fill the gap in the literature by presenting an in-depth analysis of the role of Islamic law in business dispute resolution in Indonesia. Through an interdisciplinary approach that combines law, business, and ethics, this article hopes to provide valuable insights for business practitioners, academics, and policy makers. Currently, the application of Islamic law in the context of modern business in Indonesia is still an area that needs further exploration. In the business world, cooperation, both between individuals and groups, aims to build harmonious and mutually beneficial cooperative relationships to achieve common goals. However, in practice, not everything runs smoothly, there are obstacles and disputes between various parties. One party may have misunderstandings and imbalances that cause this situation to occur. Conventional and sharia businesses experience the same problems. The rapid development of

the sharia banking industry is a major factor driving the growth of sharia business today. This development then triggered the popularity of other sharia companies. In this context, there are various methods that can be used to resolve business disputes, ranging from deliberation, mediation, arbitration, to sharia courts.

Each method has its own advantages and disadvantages, but all aim to ensure that the dispute resolution process is carried out fairly, transparently, and in accordance with sharia principles. Through this substantive justice approach, Islamic law hopes to create an economic order that is fair, prosperous, and respectful between the parties involved. This article will discuss the various methods used in resolving business disputes in Islamic law and how the substantive justice approach is applied in each stage of the settlement. In addition, this article will also examine in more depth the philosophy of justice in Islamic law which is the basis for every dispute resolution process, both at the individual level and in the broader business context. Thus, it is hoped that readers can understand how Islamic law offers a more comprehensive and humane solution in resolving business disputes. Entrepreneurs or business people tend to choose arbitration because the costs are more affordable and the process is faster, the decision is final and cannot be challenged by the court, and there are no geographical limitations in resolving disputes. In other words, arbitration can also be used to resolve business disputes involving parties from different countries. According to Law Number 30 of 1999, arbitration is an alternative body that has the authority to facilitate the resolution of civil economic conflicts, especially in situations where there is disagreement regarding agreements or contracts between the parties involved. Thus, through arbitration, problems that arise can be resolved

II. RESEARCH METHODS

The type of research used in this writing is the normative legal research method. The normative legal method is an approach that uses library data, namely legal research conducted by researching or studying problems in terms of their legal rules, as well as researching library materials or secondary data (Marzuki, 2017). In other words, the writing of this scientific paper uses the normative legal approach method by researching library materials which are secondary data, which is also referred to as library legal research. Based on the background of the problem presented, the researcher is interested in discussing it further through a written form entitled "*Business Dispute Resolution in Islamic Law: Methods and Approaches to Substantive Justice*".

III. RESULTS OF RESEARCH AND DISCUSSION

Principles of Islamic Law in Business Dispute Resolution

A literature review shows that the principles of Islamic law can provide a just and moral framework for resolving business disputes. Concepts such as fairness, transparency, and shared responsibility are core values in Islamic law and are in line with the global goal of fairer and more sustainable dispute resolution (Sumardi, 2022). One of the main principles of Islamic law is justice in the context of resolving business disputes, this means that all parties must be treated equally and fairly. Justice in Islamic law includes elements such as giving equal rights to all parties in a dispute, recognizing individual rights, and enforcing the law without discrimination. Business dispute resolution in Islamic law is based on the principle of justice which not only includes formal and procedural aspects, but also considers broader moral and social dimensions. Justice in this context aims to achieve a balance between the rights and obligations of each party involved, while minimizing the potential for harm or injustice to one party. In implementing this

principle, Islamic law provides clear guidelines on how business transactions and disputes should be resolved in a manner that meets high moral and ethical standards (Yoga, 2024). The principle of substantive justice in Islamic law is very different from procedural justice which only emphasizes the procedures or applicable legal rules. Substantive justice focuses on moral values, such as honesty, fairness, and common welfare, which require that decisions taken by the authorities in resolving disputes must prioritize common interests rather than individual interests alone (Yoga, 2024). Therefore, every decision or process taken in resolving business disputes must prioritize the welfare of both parties and avoid potential injustice that can harm other parties. This principle covers various aspects of the balance of rights and obligations in Islam, each party involved in a contract or business transaction has balanced rights and obligations. Business dispute resolution must ensure that both parties get their rights fairly, without any party being harmed. If there is an imbalance, such as in the practice of usury (interest) or fraud, then it is considered invalid under Islamic law. Justice in the settlement process is not only in the final result, but also in the process. The dispute resolution process must be transparent and fair. One important example is the use of arbitration or *tahkim* in Islamic law, which prioritizes the impartiality of the arbitrator and a thorough examination of the evidence and claims of both parties (Hidayaturohmah et al., 2023).

In addition to applying the principle of justice, one approach to resolving business disputes in Islamic law is through *islah* (peace). Islam strongly recommends deliberation in resolving disputes, which emphasizes the importance of communication and dialogue between the two parties (Satiadharmanto et al., 2024). The goal is to achieve peace that is mutually beneficial and does not harm either party. In this process, an impartial third party, such as a mediator or arbitrator, can play a role in helping both parties reach a fair agreement. Al-Qur'an surah Ash-Shura verse 38, "*And those who have responded to the call of their Lord and established prayer, and their affairs are decided by deliberation between them*". This deliberation has an important value in Islamic law because it is not only oriented towards fair results but also maintains good relations between the disputing parties, by avoiding further hostility or tension. Resolving business disputes through deliberation also helps reduce the costs and time usually required in the litigation process. Justice in resolving business disputes in Islamic law is closely related to the prohibition of practices that are considered unfair or detrimental to other parties. One of the main prohibitions in business transactions is usury (interest), which is considered a form of exploitation and injustice (Rianda et al., 2024). In Islamic law, the practice of usury is not only prohibited, but is considered a form of oppression of weaker parties, such as consumers or individuals who are in debt. Al-Qur'an surah Al-Baqarah verse 275, "*Those who consume usury cannot stand except as one who is possessed by the devil because of his touch (madness) stands*".

This principle emphasizes that in resolving business disputes, Islamic law prioritizes justice by prohibiting forms of transactions that can harm one party. Therefore, in every business dispute, practices such as usury or ambiguity (*gharar*) that can harm other parties must be avoided and corrected (Norcholis, 2021). Testimony and evidence in Islamic law, in the process of resolving business disputes in Islamic arbitration institutions, the principle of evidence and testimony plays an important role. Islamic law emphasizes the importance of fair testimony, which must come from witnesses who have integrity and are trustworthy. In addition to testimony, written documents and confessions (*iqrar*) can also be used as valid evidence in resolving disputes (Pratiwi et al., 2024). Al-Qur'an surah Al-Baqarah verse 282, "*And let two witnesses from among you who are just*". Evidence in Islamic law aims to ensure that the decisions taken are based on valid and accountable evidence, so that the decision reflects substantive justice. One important method in resolving business disputes in Islamic law is through arbitration, or *tahkim*. Arbitration in Islamic law focuses on decisions made by arbitrators or judges that are based on sharia principles and prioritize justice. Islamic arbitration differs from conventional court processes because it focuses on resolving disputes in an informal and more flexible manner (Siregar et al., 2024). However, even though it is more flexible, the principle of justice must still be maintained. Every decision in Islamic arbitration must be based on the principle of impartiality, thoroughness in examining evidence, and respect for the rights recognized by the

sharia. The arbitral decision must reflect substantive justice, namely a decision that is not only legally valid, but also fair in a broader sense, in accordance with Islamic values.

The principle of justice in Islamic law in resolving business disputes prioritizes the balance between rights and obligations, transparency, and common welfare. In practice, Islamic law encourages dispute resolution through deliberation (*islah*) or arbitration, which prioritizes substantive justice and avoids detrimental practices such as usury and fraud (Gojali, 2023). This justice also includes aspects of restitution o losses and protection of non-material rights, such as honor and integrity. With these principles, Islamic law seeks to create a more just, harmonious, and responsible business order. The principles of Islamic law can be applied in a business context in various ways, such as in contractual agreements, negotiations, mediation, and arbitration. For example, in a contractual agreement, the principles of justice and transparency can be emphasized to ensure that all parties understand and agree to the terms and conditions. In mediation and arbitration, the principles of shared responsibility and collaboration can help people talk to each other. Potential for innovation and international relevance these principles of Islamic law are relevant not only in Indonesia but also in the world. They are in line with international goals for more inclusive, equitable, and sustainable dispute resolution. By incorporating these principles into business dispute resolution practices, there is an opportunity to develop more innovative and responsive approaches to resolving issues.

This research found, through observation and analysis of real cases in Indonesia, that there have been many and varied attempts to incorporate Islamic law principles into legal practice, which have been successfully implemented in some cases, resulting in more equitable and inclusive solutions (Hendra & Nefri, 2024). However, in other situations, there are significant problems and obstacles, such as poor understanding of Islamic law and inconsistencies with secular legal standards. Integration into the legal system, ongoing efforts are being made in Indonesia to incorporate Islamic legal values into the country's legal system. This is evident in the creation of laws and policies that follow Islamic law principles, such as commercial contracts and Islamic banking. However, this integration is often complex and difficult, and requires coordination between secular and Islamic law. Application in Islamic banking is one area where Islamic law principles have been effectively applied. Islamic banking in Indonesia has grown rapidly with principles such as transparency and shared responsibility and the prohibition of *riba* (interest). This results in a more ethical and inclusive business model, but there are problems with its implementation and supervision (Saputra & Fasa, 2024). One of the main obstacles in implementing the principles of Islamic law is the lack of understanding and knowledge of Islamic law itself. Legal interpretation, professional training, and public awareness are some examples.

Principles of Evidence in Settlement of Business Disputes in Arbitration Institutions in Islamic Law

One of the seven institutional arbitration institutions currently operating throughout Indonesia is the National Sharia Arbitration Board (BASYARNAS). This institution has the authority to handle the settlement of sharia-based business disputes in Indonesia (Qutrunnada et al., 2024). BASYARNAS is an alternative forum outside the courts to resolve sharia-based business disputes. BASYARNAS, in accordance with the basic principles established by the MUI, is a dispute resolution body that has autonomy and independence in carrying out its duties. This entity is not involved or influenced by other powers or parties. BASYARNAS has the authority to handle civil disputes in various sectors such as trade, finance, industry, and services quickly and fairly, which are fully within the jurisdiction of the parties involved in the dispute and have agreed in writing to submit their resolution to BASYARNAS in accordance with the established procedures (Yoga, 2024). If the parties to an agreement or *muamalat* / civil transaction agree in writing to submit a dispute that arises between them to BASYARNAS or follow the BASYARNAS procedural regulations, then BASYARNAS has the authority to resolve the dispute, and the parties must comply with the applicable BASYARNAS procedural regulations. The parties can agree to resolve the conflict through BASYARNAS by inserting an arbitration clause in the agreement or making a separate arbitration agreement that is mutually agreed upon, either before or after the conflict arises. The following are the

stages in the dispute resolution process through BASYARNAS: (1) Submission of an arbitration request; (2) Appointment of a sole arbitrator or panel of arbitrators; (3) Submission of responses, rejections, and counterclaims from the respondent; (4) Mediation efforts; (5) Evidence collection process, examination of witnesses and experts, and the possibility of withdrawing the request; (6) Preparation of the decision; (7) Registration of the decision; (8) Implementation of the BASYARNAS decision.

All aspects in terms of procedures and processes for resolving Islamic financial institution conflicts through BASYARNAS must follow the provisions contained in Law Number 30 of 1999 concerning Arbitration and the BASYARNAS Procedural Regulations. Proof in resolving business disputes through Islamic arbitration institutions has a very important role in achieving a fair and balanced decision between the disputing parties. This principle of proof is not only based on formal law, but also considers moral and ethical values that are at the heart of Islamic law (Fausi & Setiawati, 2023). In this context, the principles of evidence in Islamic law aim to ensure that the rights of each party are respected and recognized fairly, prioritizing transparency, impartiality, and honesty in the legal process. In principle, the resolution of civil disputes (for example trade/business) can be carried out through litigation (court) and non-litigation (outside the court), the parties in the agreement are fully bound and tend to choose to resolve their disputes through a third party outside the court, namely arbitration and alternative dispute resolution which is neutral in nature and does not favor either party. The term arbitration is part of Alternative Dispute Resolution (ADR), which includes various dispute resolution mechanisms outside the formal court realm. In the context of ADR, arbitration is one of the options that is globally recognized as an effective method for ending disputes (Siregar et al., 2024). The parties who have agreed to enter into an arbitration agreement and submit their dispute resolution process through arbitration are bound to obey and implement the arbitration decision without having to wait for execution from the court. Business disputes are one of the problems that can be resolved through arbitration because of its many positive aspects, including avoiding greater costs in dispute resolution, and business relationships can occur domestically, as well as abroad/between countries (Yuherman & Marina, n.d.).

Evidence in Islamic law, both in the context of business disputes and in criminal law, has different basic principles from modern legal systems. One of the main characteristics of the Islamic legal system is that evidence does not only rely on material evidence or formal documents, but also on testimony and confession (*iqrar*) (Hendra & Nefri, 2024). Al-Qur'an surah An-Nisa verse 135 reminds us that in order to achieve justice, evidence must be carried out with full integrity and honesty, "*O you who believe, you should be people who always uphold justice*". The evidence accepted in the Islamic legal system consists of several types, namely testimony (*shahada*). Testimony from witnesses who have good capacity and integrity is very important in the evidence process. A reliable witness is a witness who is honest and has no conflict of interest. Written documents, if there is a written contract or agreement between the disputing parties, then this document can be valid evidence, as long as there is no element of fraud or lies in its creation. Confession (*iqrar*). A confession from one of the parties involved in a dispute can be binding evidence, provided that the confession is made voluntarily and without coercion. This basic principle ensures that all evidence presented must be in accordance with the norms contained in Islamic law, with the main aim of reaching a just decision and avoiding injustice. Witnesses play a very important role in the Islamic evidentiary system, including in the resolution of business disputes in arbitration institutions. According to Islamic law, two fair and trustworthy witnesses can be sufficient evidence to decide a dispute. Islamic law stipulates that witnesses must have good morals, be honest, and not be involved in personal interests in the dispute (Khoirunnisa, Dede, Wagianto, 2024). Al-Qur'an surah Al-Baqarah verse 282 emphasizes the importance of testimony in dispute resolution, "*And let two witnesses from among you who are just*". This principle shows that evidence in Islamic arbitration does not only focus on material evidence, but also prioritizes the value of honesty and integrity of witnesses. This is important to ensure that the evidence process is not only legally valid but also fair and in accordance with the principles of morality taught in Islam. Written documents, such as contracts or business agreements, play an important role in evidence in Islamic law, including in business disputes resolved through arbitration. Islam teaches the importance of clarity and certainty in every

business transaction, so that a valid contract or document can be valid evidence in the proof process. Al-Qur'an surah Al-Baqarah verse 282 teaches about the importance of written records in business transactions, *"And if you are on a journey and you do not find a writer, then let there be a collateral that is accepted"*. In the context of Islamic arbitration, if there is a valid written agreement, then it can be used as strong evidence that can support the claims of one of the parties. This contract provides a clear basis for the rights and obligations of each party, making it easier for the arbitrator to make decisions in accordance with the principles of justice in Islam (Suherman et al., 2024).

Justice in proof in Islamic law requires that every piece of evidence presented must meet high moral and ethical standards. One of the main objectives of proof in Islamic law is to ensure that the rights of each party are respected and protected. Therefore, the evidence presented in the arbitration institution must be clear, not confusing, and must be produced through legitimate means, without any deception or concealment of facts. Al-Qur'an surah Al-Baqarah verse 188 warns about the importance of avoiding fraud in business, *"And do not eat up one another's property unjustly"*. This shows that evidence in arbitration must avoid any form of fraud, evasion, or cheating that could harm one of the parties. The evidence process must be carried out with integrity, so that the decision produced by the arbitration institution truly reflects balanced justice. Settlement of business disputes through Islamic arbitration institutions prioritizes impartiality and transparency in the evidence process. Islamic arbitration recognizes that not all evidence is directly acceptable. Therefore, arbitrators must be able to assess the evidence submitted carefully, based on criteria that are in accordance with sharia principles. One important aspect in Islamic arbitration is the arbitrator's firmness in ensuring that the evidence submitted is valid and fair (Pahutar, 2023). An arbitrator must ensure that the evidentiary process is fair and impartial, given its crucial role in reaching the right decision under Islamic law. In terms of restitution or recovery of losses, evidence also plays an important role in determining how much loss must be recovered by the guilty party. Islam teaches that the injured party is given the right to receive compensation in accordance with the losses suffered. This ensures that no party is harmed more than what is reasonable in a transaction. In this case, the principle of transparent and fair evidence will help ensure that the restitution or compensation given is truly in accordance with the rights that must be restored by the injured party.

The principle of evidence in resolving business disputes in arbitration institutions in Islamic law emphasizes integrity, substantive justice, and respect for the rights of each party. Evidence does not only involve material evidence such as written documents, but also valid testimony, confessions, and valid and reliable evidence. The principle of justice underlying this evidence aims to reach a decision that is not only legally valid, but also reflects justice in a broader sense. Therefore, Islamic arbitration institutions must always prioritize these principles in every business dispute resolution process so that the resulting decisions reflect the principles of justice, transparency and honesty (Suherman et al., 2024). Various stakeholders must work together and collaborate to realize this potential. Legal practitioners, academics, policy makers, and the business community fall into this category. This collaboration can help overcome existing challenges and barriers and ensure that Islamic law principles are applied consistently and effectively. This study found that, despite the obstacles, there is great potential to expand Islamic law principles in business dispute resolution. These principles include opportunities for innovation, increased fairness and inclusion, and global applicability. If applied correctly, Islamic law principles can help resolve business issues in Indonesia and abroad. This shows that Islamic law is not only beneficial at the local level but can also help legal practice around the world.

IV. CONCLUSION

The Business dispute resolution in Islamic law has a unique approach and focuses on the principle of substantive justice, which aims to ensure the restoration of legitimate rights for each party involved, without enforcing justice solely on a procedural basis. This approach prioritizes moral and ethical values

taught in Al-Qur'an, Hadith, and other sharia principles. In this context, dispute resolution is not only carried out through formal legal channels, but also by considering honesty, integrity, and balance between rights and obligations. Some important points that can be concluded from this discussion are the substantive justice approach. Islamic Law emphasizes the achievement of substantive justice, which means that dispute resolution is carried out by paying attention to the moral and ethical values contained in Islamic law. The decisions taken must truly reflect the legitimate rights of the injured party and avoid injustice to any party. Dispute resolution methods, in Islamic law, business disputes can be resolved through several methods, including deliberation, mediation, and arbitration. Each of these methods aims to reach a fair agreement for both parties. In this case, the Islamic arbitration institution plays an important role in adjudicating business disputes objectively, by utilizing the profound principles of Islamic law. The role of evidence, evidence in resolving business disputes is very important in ensuring that the decisions taken are valid and fair. Evidence is carried out through various forms, such as testimony, written documents, and confessions. This principle of evidence requires that any evidence presented must meet the criteria of honesty, impartiality, and relevance to the dispute being processed. The importance of integrity and impartiality, in resolving business disputes in Islamic arbitration institutions, integrity and impartiality are very important. The arbitrator must assess all evidence objectively, without being influenced by personal interests or outside parties, to ensure that the decisions taken truly reflect balanced justice. Restitution and recovery of losses, one of the main objectives of resolving business disputes in Islamic law is the recovery of losses suffered by the injured party. Restitution is carried out in a fair and proportional manner, so that the injured party obtains rights in accordance with the losses suffered. Overall, the Islamic legal approach to resolving business disputes not only prioritizes formal justice, but also includes substantive justice that assesses the depth of morality and ethics in each process. Thus, Islamic law seeks to create a dispute resolution mechanism that is not only legally valid, but also creates balance and peace between the parties involved, and respects their rights to the maximum.

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