

## NUCLEAR THREAT IN INDONESIA'S SOVEREIGN RIGHTS IMPACTED BY THE AUKUS AGREEMENT

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Article	Abstract
<p><b>Keywords:</b></p> <p><b>AUKUS, Nuclear-powered submarines, UNCLOS, Executive Economic Zone</b></p> <p><b>DOI:</b></p> <p><b>10.28946/scls.v2i2.4045</b></p>	<p>The AUKUS agreement, a trilateral pact between Australia, the United Kingdom, and the United States, has increased tensions between Indonesia and Australia. The deal focuses on enhancing defense capabilities, particularly by developing nuclear-powered submarines. This has broader geopolitical implications for the Asia-Pacific region and affects bilateral relations between Indonesia and Australia. The two countries have historically shared strong economic ties and cooperation in various sectors but have also faced disagreements, particularly regarding issues like West Papua and regional security alignments. Indonesia views Australia's participation in AUKUS as potentially increasing foreign military presence in the region, raising concerns about sovereignty and maritime security. The focus on nuclear submarines also raises legal and environmental considerations under international maritime law, particularly concerning exclusive economic zones (EEZs) and resource sovereignty. With the world's largest maritime territory, Indonesia emphasizes adherence to UNCLOS and calls for dialogue to manage these tensions peacefully. Some perceive the AUKUS alliance as a response to balance China's growing power, but this polarizes regional perspectives, with Southeast Asian nations expressing mixed reactions ranging from support to apprehension. The alliance's implications extend beyond military capability enhancement to include technological cooperation and regional stability efforts. In conclusion, AUKUS aims to bolster security and technological advancement in the Indo-Pacific. Still, its implementation requires careful navigation of legal,</p>

environmental, and geopolitical complexities to mitigate potential regional tensions and uphold international norms.

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## A. INTRODUCTION

Tensions between Indonesia and Australia regarding the AUKUS (Australia-United Kingdom-United States) agreement have complex roots related to several political, military, and economic factors. To understand the background of this tension, we must look at the dynamics of bilateral relations between Indonesia and Australia and the broader geopolitical context in the Asia Pacific region. Relations between Indonesia and Australia have experienced various changes throughout their history. Although the two countries have strong economic ties and much cooperation in multiple fields, including trade, security, and education, several differences of opinion and disputes arise from time to time.

Indonesia and Australia have experienced tension over West Papua (formerly Papua). Australia's support for the self-determination of Papuans has caused diplomatic strains with the Indonesian government. Additionally, Australia is a key ally of the United States, participating in various US-led regional security and defense initiatives, including the AUKUS agreement.<sup>1</sup>

For Indonesia, Australia's involvement in such an agreement could be seen as a worrying step as it might increase foreign military presence in the region.<sup>2</sup>

The AUKUS treaty raises questions about international maritime law, particularly to Australia's development of nuclear submarines. Based on the 1982 United Nations Convention on the Law of the Sea (UNCLOS), countries have rights and obligations regarding exclusive economic zones (EEZ) and sovereignty over natural resources in their territorial waters.<sup>3</sup> Increased military activity in this region could give rise to international legal tensions because Indonesia and Australia have overlapping claims to natural resources in each other's waters.

An increase in military presence or a shift in power in the region, which may occur due to the AUKUS agreement, has the potential to trigger regional tensions or conflict that could endanger Indonesia's sovereignty and security.<sup>4</sup>

At a broader level, it is incumbent upon states to fulfill obligations under international law to uphold regional peace and stability. Actions that potentially escalate tensions between countries in the region may be deemed as contravening this fundamental principle. The AUKUS agreement, particularly if perceived as a responsive measure to the burgeoning influence of China in the region, can intricately entangle regional dynamics and exacerbate tensions between nations such as Indonesia and Australia.

China's role may also influence regional geopolitical tensions between Indonesia and Australia. China is progressively establishing a stronger presence in the Asia Pacific region through sizable infrastructure and economic initiatives such as the Belt and Road Initiative (BRI). Several countries, including Australia, may perceive the necessity of formulating a

<sup>1</sup> Xiao Gao and Guy C. Charlton, "Australia and New Zealand in the West Papua Conflict," THE DIPLOMAT, 2023, <https://thediplomat.com/2023/04/australia-and-new-zealand-in-the-west-papua-conflict/>.

<sup>2</sup> Redaksi, "Wajar, Indonesia Mewaspadai AUKUS," Kompas, 2023, <https://www.kompas.id/baca/opini/2023/03/16/wajar-indonesia-mewaspadai-aukus>.

<sup>3</sup> Donald Rothwell, "The Navigational Rights of AUKUS Submarines," EASTASIAFORUM, 2023, <https://eastasiaforum.org/2023/06/07/the-navigational-rights-of-aukus-submarines/>.

<sup>4</sup> "Australia Klaim Pulau Pasir NTT, Masyarakat Ancam Gugat," CNN INDONESIA, 2022, <https://www.cnnindonesia.com/internasional/20221024100544-106-864471/australia-klaim-pulau-pasir-ntt-masyarakat-ancam-gugat/2>.

response to China's expanding influence, a perspective that may be encapsulated in an agreement such as AUKUS.<sup>5</sup>

The AUKUS treaty has brought Australia into a partnership to develop nuclear-powered submarines to enhance their defense capabilities. This development has the potential to influence the regional balance of power, which may impact Indonesia's strategic considerations related to its national security.<sup>6</sup> Australia is now considering nuclear power for submarines, a new step for the country. Though Australia has never had a nuclear power plant before, the country may use nuclear power without building a plant.<sup>7</sup>

The AUKUS cooperation aims to work together to support Australia's purchase of nuclear submarines. An 18-month feasibility study and a procurement plan outline or nuclear fuel supply chain study are scheduled to launch this initiative. To guarantee the non-proliferation, safety, and security of nuclear materials and technologies, the three partners are committed to maintaining the highest levels of protection, transparency, verification, and accounting procedures. But it's crucial to acknowledge that several complex concerns have surfaced, affecting not just the three parties but also state governments, the international community, and the global framework regulating nuclear energy use for national security.<sup>8</sup>

Adelaide, South Australia, is home to most of Australia's submarines. Australia has a long history of producing conventionally propelled submarines, which has produced a highly qualified and specialized workforce. Furthermore, a company from northwest England named Barrow-in-Furness seems well-positioned to build an Australian version of the Type 26 frigate at its new shipyard in Adelaide. In Adelaide, the first nuclear submarine is expected to be constructed in 2040. Submarine construction is a huge operation, and it is typical for well-known initiatives to go over budget and have delays. The security of the Indo-Pacific area is AUKUS's top priority.<sup>9</sup>

## B. RESEARCH METHODS

This research adopts a normative juridical approach to analyze the impact of the AUKUS Agreement on Indonesian sovereignty, especially in international maritime law. This method was chosen because it makes it possible to analyze regulations by analyzing various relevant laws and regulations, both Indonesian national law and international law, especially UNCLOS, to identify applicable legal norms. This research method also helps the author analyze each country involved in the nuclear submarine project (AUKUS).

## C. ANALYSIS AND DISCUSSION

Sebastian Strangio, who serves as the Southeast Asia editor of *The Diplomat*, underscores the palpable concerns harbored by Southeast Asian nations regarding the potential ramifications of being at the forefront of any future US/China conflict. He expounds on the disparities in perceptions between Southeast Asian states and the United States about China's behavior. While the region is wary of the prospect of Chinese hegemony, there is a discernible

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<sup>5</sup> "Potensi Dan Tantangan Implementasi Belt and Road Initiative Bagi Ekonomi Indonesia," BRIN, 2023, <https://www.brin.go.id/news/116126/potensi-dan-tantangan-implementasi-belt-and-road-initiative-bagi-ekonomi-indonesia>.

<sup>6</sup> Budiawan Sidik A, "Indonesia Dan ASEAN, Di Persimpangan Kekuatan AUKUS Dan China," Kompas, 2023, <https://www.kompas.id/baca/riset/2023/04/03/indonesia-dan-asean-di-persimpangan-kekuatan-aukus-dan-china>.

<sup>7</sup> Denis Mole, "Nuclear Submarines Could Lead to Nuclear Power for Australia," THE STRATEGIST, 2021, <https://www.aspistrategist.org.au/nuclear-submarines-could-lead-to-nuclear-power-for-australia/>.

<sup>8</sup> Abdi Manab Idris, Nugroho Adi Sasongko, and Yanif Dwi Kuntjoro, "AUKUS Cooperation in the Form of Australian Nuclear Submarine Technology for Stability in Indo Pacific Region," *International Journal of Research and Innovation in Social Science* 06, no. 02 (2022): 745–50, <https://doi.org/10.47772/ijriss.2022.6237>.

<sup>9</sup> *Ibid.*

difference in the degree of alignment with the predominant US viewpoint on the competition with China, especially in the context of the broader global confrontation between democracy and authoritarianism. This view was emphasized in the recent discussions around the AUKUS alliance.<sup>10</sup>

Scott Morrison, the Prime Minister of Australia, emphasized that the new partnership aims to safeguard shared values and enhance security and prosperity in the Indo-Pacific region. He pointed out the increasing security concerns in the area and the narrowing technological advantage that Australia and its allies have been experiencing as key drivers behind the new collaboration. Euan Graham of the International Institute for Strategic Studies stated that the shift to nuclear submarines underscores the significant transformation in Australia's security landscape since the submarine contract was signed with France in 2016. The deteriorating relations between Australia and China influence this shift. According to Australia's 2020 Defence Strategic Update, the country now confronts a more competitive strategic environment, introducing more advanced military systems due to technological advancements and the escalating use of various covert tactics to pressure states without triggering a traditional military response.

Australia's naval capabilities have advanced significantly with the choice to switch from a fleet of diesel-electric submarines to a fleet of nuclear-powered submarines. However, there are many obstacles to overcome. A submarine is little more than a costly metal tube and, at worst, a possible catastrophe if it is not properly maintained and has insufficient workers. Over the next ten years, one of the main challenges facing the Royal Australian Navy (RAN) will be addressing the issues of nuclear workforce, sustainability, and technical capabilities to enable a seamless transition.

The future submarine employment is largely determined by the size of the crew and the need for shore posts for professional growth, training, and recuperation. Deployment, maintenance, and associated activities are all part of the high-capability rotation principle that powers nuclear submarines. A defense expert claims that when compared to Australia's Collins-class diesel-electric submarines and the nuclear submarines being developed by the US Navy (USN) and the Royal Navy (RN), nuclear-powered submarines are considered the most complex man-made machines, even more complex than the space shuttle. These submarines contain a nuclear reactor at the back, strong explosives at the front, and room for the crew, who might spend much time on board..

The following are essential details concerning the Astute-class nuclear submarines: They displace 7,400 tonnes of seawater and are 97 meters long. Armed with Tomahawk cruise missiles and able to round the world without surfacing, they greatly improve the Australian Navy's conventional strike capacity. The AUKUS alliance, signed in 2021, will significantly impact Australia's defense capabilities and domestic policy while intensifying its rivalry with China.<sup>11</sup>

Up to 1,200 kilometers off the coast, the Smart Submarine Astute can accurately hit targets. The Virginia-class equivalent of the US Navy, the British Astute submarine, was constructed by America's Newport News Shipbuilding and General Dynamics Electric Boat. The Australian Navy's conventional strike capabilities have been significantly improved by the newly announced development involving the Smart Submarine Astute. With this latest development, the submarine can now precisely and efficiently hit targets up to 1,200 kilometers off the coast.

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<sup>10</sup> Bruno Tertrais, "AUKUS and Its Implications for Asia, US-European Relations and Non-Proliferation," *Norwegian Institute of International Affairs*, 2021.

<sup>11</sup> Artyom GARIN, "AUKUS AND THE SOUTH PACIFIC: FOREIGN POLICY AND SECURITY IMPLICATIONS FOR AUSTRALIA," *Southeast Asia: Actual Problems of Development*, January 1, 2022, 223-33, <https://doi.org/10.31696/2072-8271-2022-1-1-54-223-233>.

The decision to incorporate nuclear submarines stems from the strategic objectives of the AUKUS Alliance, which seeks to contribute to stability and global security, particularly in the Indo-Pacific region. It is imperative to note that the anticipated readiness of the submarines is projected around 2040, signifying a considerable long-term commitment. Beyond the focus on nuclear-powered submarines, the AUKUS Alliance embodies a deeper trilateral security partnership aimed at fostering enhanced information and technology sharing and integrating security and defense-related science, technology, industrial bases, and supply chains. Primarily, the collaboration will prioritize cyber capabilities, artificial intelligence, quantum technologies, and additional undersea capabilities, alongside expanded access for US forces in Australia. Consequently, the nuclear-powered submarines denote a segment of the broader political, strategic, and technological dimensions underlying the AUKUS framework.<sup>12</sup>

## 1. China's Behind The AUKUS

The primary objective is to limit China's influence in the region. This involves preventing China from asserting control over international waters, violating the sovereignty of neighboring countries, and posing threats to their territories. The AUKUS strategic alliance seeks to strengthen security and defense collaboration in the Indo-Pacific region, aiming to counterbalance China's influence and challenge its assertive policies in the area. The AUKUS strategic alliance seeks to strengthen security and defense collaboration in the Indo-Pacific region, aiming to counterbalance China's influence and challenge its assertive policies.<sup>13</sup> Nuclear-powered submarines play a crucial role in achieving this goal. These submarines are essential for exercising control over the seas, denying access to adversaries, gathering intelligence, and projecting power, especially with their increasing arsenal of long-range missiles. It is projected that 2030 China will possess at least 76 submarines, while the United States will have 66, some of which will be deployed in other regions. Given the vast expanse of the Indo-Pacific region, efficient maritime operations necessitate the capability to cover long distances swiftly and remain deployed for extended periods. Nuclear-powered submarines with their ability to stay submerged for extended durations without the need to surface are instrumental in fulfilling these requirements.

However, their advantages against modern diesel-electric submarines are reduced: the latter are almost entirely silent when they run on batteries, whereas reactors' cooling always generates pump noise.

The AUKUS agreement has stirred mixed feelings in Asia. While countries like Singapore and the Philippines have shown support, many Southeast Asian nations, particularly Indonesia and Malaysia, have expressed apprehension. They are concerned about being caught in escalating US-China tensions and fear being pressured into siding with the United States. Additionally, there has been disparity among different countries in terms of their military responses to environmental issues. Despite some defense policies incorporating ecological protection, there has been limited progress in fostering international collaboration in this domain, as noted by Levallant.

The three States may end up sharing responsibility for environmental problems brought on by their military operations due to the sharing that AUKUS has in mind. This is outlined in UNCLOS Article 31, which states that the flag state is internationally liable for any loss or harm to the coastal state caused by a warship or other government vessel operating for noncommercial purposes that violates the coastal state's laws and regulations pertaining to

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<sup>12</sup> *Ibid.*

<sup>13</sup> Leonova, "The Impact of the Strategic Partnership AUKUS on the Geopolitical Situation in the Indo-Pacific Region9," *International Organisations Research Journal* 17, no. 3 (2022): 144-56, <https://doi.org/10.17323/1996-7845-2022-03-08>.

passage through its territorial sea, the provisions of this Convention, or other international legal norms.

## 2. Legal and Environmental Implications of AUKUS Operations

The possibility exists that an AUKUS surgery could lead to harm that is covered by specific laws. Autonomous navigation, operation-capable gadgets, and the well-known danger of nuclear technology could harm significant maritime ecosystems and resources. AUKUS partners may be held accountable for choices they otherwise would not have made if they possess information that encourages and facilitates such violations.

AUKUS partners may also share responsibility for international wrongdoing if their activities lead to marine pollution or other environmental damage. Although military vessels are exempt from the most significant maritime ecological treaty, Article 236 of UNCLOS states that state military and non-commercial vessels are not required to comply with rules on environmental protection. Despite this, some international law obligations, including the International Convention for the Prevention of Pollution from Ships (MARPOL) and its amending protocol, could still be relevant.<sup>14</sup>

According to Article 31 of the United Nations Convention on the Law of the Sea (UNCLOS), the flag state bears international responsibility for any losses or damages sustained by the coastal state as a result of a warship or government ship failing to abide by international law or the coastal state's rules governing passage through the territorial sea. Furthermore, states must exercise "due regard" for the rights and obligations of other states when conducting military operations within the Exclusive Economic Zone (EEZ) of another state, according to Article 56 of UNCLOS.

Indonesia has rights, jurisdiction, and obligations in an exclusive economic zone under the 1985 Maritime Law Convention with UU No. 17 of 1985. These are determined by Article 56 of the Convention.<sup>15</sup>

- a. In the exclusive economic zone, the coastal State has:
  - 1) Sovereign rights to explore and exploit, conserving and managing the natural resources, whether living or non-living, of the waters superjacent to the seabed and of the seabed and its subsoil and concerning other activities for the economic exploitation and exploration of the zone, such as the production of energy from the water, currents, and winds;
  - 2) Jurisdiction as provided for in the relevant provisions of this Convention about:
    - a) The establishment and use of artificial islands, installations and structures,
    - b) Marine scientific research
    - c) The protection and preservation of the marine environment
- b. The coastal state must act in a way that is consistent with the terms of this Convention when exercising its rights and carrying out its obligations under it in the exclusive economic zone, taking into account the rights and obligations of other states.

Activities within the Exclusive Economic Zone (EEZ) require careful consideration of their potential impact on the coastal State's rights, necessitating measures to minimize any adverse effects. An unresolved controversy exists regarding the permissibility of military operations within another State's EEZ. Specifically, the legality of military research and surveillance remains a point of contention. Some States argue that these actions fall under the exclusive jurisdiction of the coastal State as marine scientific research per Article 56 of

<sup>14</sup> Simon McKenzie and Eve Massingham, "AUKUS, the Regulation of the Ocean and the Legal Perils of Working Together," 2022, 1-26, <https://doi.org/https://doi.org/10.31235/osf.io/rk963>.

<sup>15</sup> Inggrit Fernandes and M Rizqi Azmi, "Eksistensi Hak Berdaulat Dan Hak Yurisdiksi Indonesia Di Zona Ekonomi Eksklusif," *Jurnal Hukum Das Sollen* 1, no. 4 (2018), <https://doi.org/10.32520/das-sollen.v1i4.360>.

UNCLOS. In contrast, others assert that such activities align with the freedom of navigation as outlined in Article 58.

### 3. Indonesia Response and Sovereign Rights

The Ministry of Foreign Affairs of Indonesia has issued a statement emphasizing the expectation for Australia to uphold security in the ASEAN region while adhering to the regulations outlined in UNCLOS 1982. Indonesia has cautiously observed Australia's decision to acquire nuclear-powered submarines, citing deep concern over the region's escalating arms race and power dynamics. Indonesia has stressed the importance of Australia's continued commitment to nuclear non-proliferation obligations as outlined in the Treaty of Amity and Cooperation, urging Australia to uphold its dedication to regional peace, stability, and security. Additionally, Indonesia has called for dialogue and peaceful resolution of any differences, emphasizing the importance of respecting international law, notably UNCLOS 1982, to secure peace and stability in the region.<sup>16</sup>

With its vast maritime territory, Indonesia has the distinction of having the largest maritime area in the world. Approximately two-thirds of the country's land area is encompassed by territorial waters, highlighting its status as a maritime nation. The expansive sea area of Indonesia covers 3.2 million km<sup>2</sup>, including 300,000 km<sup>2</sup> of territorial sea and 2.9 million km<sup>2</sup> of archipelagic sea, along with an exclusive economic zone spanning 2.7 million km<sup>2</sup>. With 17,508 islands and 95,181 km of coastlines, Indonesia's archipelagic nature has been integral to its identity since declaring independence on August 17, 1945. The significance of the sea extends beyond geographical boundaries, serving as a crucial element for national unity, defense, security, and economic prosperity due to its abundant marine resources. Indonesia's exclusive economic zone (EEZ) represents a significant source of potential prosperity, emphasizing the country's economic significance in the maritime domain. Indonesia, as ASEAN Chair in 2023, can reinforce ASEAN's central role and promote regional cooperation, stability, and resilience by implementing the SO strategy through diplomatic efforts, economic cooperation, and multilateralism.<sup>17</sup>

Recognizing the strategic importance of marine resources, various legal frameworks, including the Indonesian Exclusive Economic Zone Law of 1983, have been developed to regulate and safeguard the EEZ. The allocation of sovereign rights and responsibilities within the EEZ is delineated following international conventions, notably the United Nations Convention on the Law of the Sea (UNCLOS). The EEZ regulations, such as those outlined in Law No. 5 of 1983, assert Indonesia's authority over marine natural resources, encompassing the exploration, exploitation, conservation, and management of biological and non-biological resources. This comprehensive approach underscores the country's commitment to utilizing and preserving its marine wealth while upholding legal frameworks to govern these activities.<sup>18</sup>

The convention requires archipelagic States to allow for the right of innocent passage for ships and foreign aircraft through their territorial waters. However, it's important to note

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<sup>16</sup> Kemlu RI, "Statement on Australia's Nuclear-Powered Submarines Program" (Australia, 2021), [https://kemlu.go.id/portal/en/read/2937/siaran\\_pers/statement-on-australias-nuclear-powered-submarines-program](https://kemlu.go.id/portal/en/read/2937/siaran_pers/statement-on-australias-nuclear-powered-submarines-program).

<sup>17</sup> Alma Evelinda Silalahi et al., "Indonesia's Perspective and Possible Strategies As the Chairmanship of Asean 2023 in Responding To the Emergence of Australia-Uk-Usa Defense Pact Perspektif Indonesia Dan Strategi Yang Mungkin Sebagai Ketua Asean 2023 Dalam Merespon Munculnya Pakta Pert," *Jurnal Pertahanan Dan Bela Negara* 13, no. 2 (2023): 115-43, <https://doi.org/https://doi.org/10.33172/jpbh.v13i2.13007>.

<sup>18</sup> Indien Winarwati, "Penguatan Hak Berdaulat (Sovereign Right) Pada Zee Indonesia Dalam Rangka Perlindungan Sumber Daya Alam Laut," *Jurnal Ilmiah Hukum LEGALITY* 24, no. 2 (2017): 172-80, <https://doi.org/10.22219/jihl.v24i2.4268>.



that the right of peaceful passage is not absolute, as stated in the prohibition norms in Article 19, paragraph (2) of UNCLOS 1982. This is primarily due to concerns about resource security and the need to uphold the sovereignty of coastal countries like Indonesia against potential threats posed by innocent passage in their territorial sea.

The exercise of innocent passage in these waters can disrupt the natural resources beneath the sea. Therefore, security measures are necessary to ensure that the implementation of innocent passage does not compromise the sustainable use of these resources, including illegal fishing, pollution, risks associated with nuclear-powered ships, surveying, and more.<sup>19</sup>

#### D. CONCLUSION

The recent developments in the relationship between Indonesia and Australia, influenced by the AUKUS agreement, result from various complicated factors. This agreement involves the United States, the United Kingdom, and Australia to bolster Australia's defense capabilities through nuclear-powered submarines.

Indonesia and Australia have a history of economic collaboration and bilateral connections but have encountered tensions, particularly concerning Australia's position on West Papua and its alignment with the United States in regional security pacts. The AUKUS agreement, particularly Australia's shift to nuclear submarines, has ignited security, legal, and environmental apprehensions for Indonesia.

This agreement is being perceived as a response to the increasing influence of China and could potentially heighten tensions in the region. Indonesia's stance underscores the importance of upholding regional peace, adherence to international law, and responsible military conduct. The country asserts its sovereign rights under UNCLOS to manage and conserve marine resources within its Exclusive Economic Zone (EEZ). It expresses concerns about possible environmental impacts from military activities related to the AUKUS alliance. Addressing these concerns necessitates sustained diplomatic dialogue and adherence to international norms governing maritime operations and security partnerships.

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<sup>19</sup> Dadang Suhendang, "Penegakan Hukum Hak Lintas Damai Bagi Kapal-Kapal Asing Di Perairan Indonesia," *Brawijaya Law Student Journal*, 2015, 1-21, <https://id.scribd.com/document/467582587/35668-ID-penegakan-hukum-hak-lintas-damai-bagi-kapal-kapal-asing-di-perairan-indonesia>.



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