

# JURIDICAL ANALYSIS OF FORCE MAJEURE CONDITIONS AS A REASON FOR THE FAILURE TO PERFORM THE CONTENTS OF THE AGREEMENT BY THE LESSOR (A STUDY OF DECISION NUMBER 130/Pdt.G/2023/PN.Mdn)

**Maria Simamora<sup>1</sup>, Roida Nababan<sup>2</sup>, Besty Habeahan<sup>3</sup>**

<sup>1,2,3</sup>Faculty of Law, Universitas HKBP Nommensen, Medan, Indonesia

E-mail: [mariasimamora@student.uhn.ac.id](mailto:mariasimamora@student.uhn.ac.id), [roida.nababan@uhn.ac.id](mailto:roida.nababan@uhn.ac.id), [bestyhabeahan@uhn.ac.id](mailto:bestyhabeahan@uhn.ac.id)

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## Abstract

The occurrence of force majeure in an agreement gives rise to legal consequences concerning the performance of the parties' obligations and potential losses arising from the agreement. In practice, force majeure is often invoked as a defense to avoid liability for breach of contract, including in lease agreements. In Decision Number 130/Pdt.G/2023/PN Mdn, the defendant failed to carry out the agreed renovation of a commercial building and invoked the Covid-19 pandemic as force majeure. This claim raises legal issues regarding whether the elements of force majeure were fulfilled and the limits of the legal liability borne by the invoking party. The aim of the present research is to evaluate the application of force majeure as a defense against contract violations and to look at the judges' legal rationale in reaching their decision. The study is descriptive in nature, applying a normative legal approach with statute and case approaches, and is qualitatively investigated through library research. Since there is no causal connection between the Covid-19 pandemic and the renovation obligation that was due before it happened, the findings show that the pandemic does not meet the requirements of force majeure as outlined in Articles 1244 and 1245 of the Indonesian Civil Code. The defendant's financial difficulties were categorized as business risks. The decision reaffirms the principles of pacta sunt servanda, good faith, and the burden of proof on the party invoking force majeure.

**Keywords:** *Lease Agreement, Breach of Contract, Force Majeure*

## INTRODUCTION

In civil law, agreements constitute a highly crucial matter and are always closely connected to daily human life, particularly in relation to assets. According to Article 1313 of the Indonesian Civil Code, the essence of an agreement lies in the collective act of one or more persons who voluntarily bind themselves in a legal relationship with the counterparty, with the purpose of giving rise to, modifying, or extinguishing a right. Article 1338 of the Indonesian Civil Code stipulates that agreements lawfully made shall be binding as law upon the parties who enter into them, thereby ensuring legal certainty in the implementation of civil legal relations. Referring to Article 1548 of the Indonesian Civil Code, lease is defined as an agreement that enables an individual to obtain the right of use over an object for a certain period of time through the payment of specific compensation. In a lease agreement of a shop-house, there are additional obligations imposed on the parties. The lessee is obliged to pay the rent and maintain the condition of the shop-house so that it remains suitable for use, while the lessor is obliged to provide the leased object in a condition that allows it to be optimally utilized in accordance with the lessee's intended purpose. Legal relations within an agreement will proceed harmoniously if all obligations are properly performed. However, in practice, various disputes frequently arise, including delays in rental payments, shop-house conditions that are unfit for use due to the negligence of the lessor, as well as the lessor's failure to fulfill the obligation to renovate the shop-house as stipulated in the agreement. Such problems may result in the failure to achieve the objectives of the agreement, which is referred to as breach of contract. In Dutch, wanprestatie means poor performance. When a debtor fails to perform the obligation or performance stipulated in a contract, such

failure constitutes a breach of contract, thereby indicating negligence in carrying out the obligations agreed upon between the creditor and the debtor. There are four forms of breach of contract, namely:

- a. failure to perform the agreed obligation
- b. performance of the obligation, but not in accordance with the terms stipulated in the agreement clause.
- c. performance of the obligation as agreed, but beyond the specified due date
- d. carrying out an act that is expressly prohibited by the contract.

Obstacles in realizing the intent and objectives of an agreement may be triggered by the existence of a compelling circumstance, which in legal terminology is known as force majeure. The Indonesian Civil Code provides certain exceptions through the concept of force majeure, which generally refers to events beyond human control that may hinder or even prevent the performance of an agreement. Force majeure is regulated in:

Article 1244 of the Indonesian Civil Code

If there are grounds for it, the debtor shall be ordered to compensate costs, losses, and interest if he cannot prove that the non-performance or untimely performance of the obligation was caused by an unforeseen event that cannot be attributed to him, provided that there is no bad faith on his part.

Article 1245 of the Indonesian Civil Code

No compensation for costs, losses, and interest shall be due if, due to force majeure or an accidental event, the debtor is prevented from delivering or performing what is required of him, or if, due to the same circumstances, he has carried out an act that is prohibited.

These provisions establish that if force majeure is proven to have occurred, the debtor is no longer burdened with the obligation to pay interest, costs, and losses, as the inability to perform is not considered a form of negligence. Although the force majeure policy in the Indonesian Civil Code focuses primarily on exemption from interest, losses, and costs, these provisions remain fundamental in understanding compelling circumstances. Force majeure contains several elements, namely: the existence of an obstacle preventing the parties from performing the obligations constituting their performance, the obstacle is not the fault of either party, and the cause does not arise from circumstances that fall within the debtor's business risks. Force majeure is directly related to the consequences of compensation, as it not only causes delays in the performance of obligations but may also release the parties from the obligation to provide compensation. However, in practice, not all obstacles can be categorized as force majeure. Many issues in lease agreements do not relate to the destruction of the leased object, but rather to attempts by the lessor to invoke force majeure as a reason to avoid obligations, such as maintenance, repair, or renovation obligations. This phenomenon has been particularly evident since the Covid-19 pandemic.

As stipulated in Presidential Decree Number 12 of 2020, the Covid-19 pandemic was designated as a non-natural national disaster due to its extensive impact on social, economic, and public health aspects. This condition has often been used as a justification by parties who fail to perform the contents of an agreement, including in lease agreements. Frequently, the reasons put forward by the lessor are subjective in nature, such as financial difficulties, internal disruptions, lack of labor, delays by third parties, or other reasons that actually remain within the lessor's sphere of control. In order to be categorized as force majeure, the event must constitute an objective occurrence that cannot be avoided or predicted and must directly render it impossible for the lessor to perform the obligation. In other words, force majeure cannot be used to conceal negligence, unpreparedness, or managerial failure on the part of the lessor. Moreover, in many cases, the lessor is unable to prove the existence of a causal relationship between the event claimed as force majeure and the failure to fulfill contractual obligations. For example, the lessor may claim the occurrence of a disaster or certain conditions beyond control, while in reality such events do not directly hinder the renovation obligation that must be carried out. This indicates that the invocation of force majeure is often merely an attempt to avoid potential legal liability arising from breach of contract. A concrete example of this issue can be seen in Decision Number 130/Pdt.G/2023/PN Mdn. The case originated from a lease agreement between the Plaintiff as the lessee and the Defendant as the owner of a shop-house, under

which the Defendant was obliged to renovate a six-story shop-house unit prior to the commencement of a fifteen-year lease period. The renovation was funded by the Plaintiff in the amount of IDR 250,000,000, which was converted as part of the rental payment. The Defendant was required to complete the renovation no later than 20 January 2018. However, the Defendant failed to carry out the renovation within the agreed timeframe and, as of 21 January 2018, was in a state of breach of contract, which persisted for approximately five years until the decision of the Medan District Court was rendered on 30 August 2023. The Defendant continued to fail to perform the obligation despite having received two formal warnings from the Plaintiff. In the proceedings, the Defendant argued that the failure was caused by the Covid-19 pandemic, which resulted in financial difficulties, leading to the renovation funds being used for other purposes. However, the Panel of Judges rejected this argument as force majeure because the Defendant failed to prove a direct causal relationship between the pandemic and the inability to carry out the renovation. The fact that the renovation was not carried out at all, the use of renovation funds for purposes other than those agreed upon, and the absence of efforts to restore performance after the pandemic conditions subsided formed the basis for the judges to conclude that the Defendant remained in a state of breach of contract.

Considering the disparity between the reasons presented by the Defendant and the considerations of the Panel of Judges, research on force majeure becomes important to undertake. In Decision Number 130/Pdt.G/2023/PN Mdn, the Defendant asserted the existence of force majeure as the cause of the failure to perform the renovation obligation of the shop-house and therefore assumed that legal liability for breach of contract could not be imposed. However, this argument requires further examination to assess whether the circumstances presented were truly unforeseeable, unavoidable, and beyond the Defendant's fault, as required under the concept of force majeure in civil law. This issue has strong relevance to the judicial considerations underlying the decision-making process of the Panel of Judges in resolving the dispute. After assessing the force majeure argument submitted by the Defendant, the Panel of Judges examined the facts revealed in the trial, the contents of the shop-house lease agreement, and the unfulfilled renovation obligation. Based on these considerations, the Panel of Judges determined whether the Defendant remained legally liable for breach of contract in the shop-house lease agreement, despite having invoked force majeure as a defense. Based on the issues described above, the author is interested in conducting research entitled "Juridical Analysis of Force Majeure Conditions as a Reason for the Failure to Perform the Contents of the Agreement by the Lessor (A Study of Decision Number 130/Pdt.G/2023/PN Mdn)."

## LITERATURE REVIEW

In civil law, an agreement constitutes a fundamental source of legal relations between parties, giving rise to reciprocal rights and obligations. Article 1313 of the Indonesian Civil Code defines an agreement as a legal act whereby one or more persons bind themselves to one or more other persons. This definition is reinforced by the principle of *pacta sunt servanda* as stipulated in Article 1338 of the Indonesian Civil Code, which provides that legally formed agreements are binding as law upon the parties. In the context of lease agreements, particularly shop-house leases, the lessor is obliged to deliver the leased object in a condition suitable for use and to ensure that the lessee can enjoy the object in accordance with the agreed purpose. Failure to fulfill these obligations constitutes a breach of contract (*wanprestasi*), which may give rise to legal liability.

Breach of contract occurs when a party fails to perform its contractual obligations, performs them improperly, performs them late, or acts contrary to what has been agreed. Under Article 1243 of the Indonesian Civil Code, such failure generally results in an obligation to compensate for losses, unless the breaching party can prove the existence of force majeure. Force majeure, as regulated in Articles 1244 and 1245 of the Indonesian Civil Code, refers to unforeseen and unavoidable events beyond the control of the parties that directly prevent the performance of contractual obligations. Legal doctrine distinguishes between absolute force majeure, which renders performance entirely impossible, and relative force majeure, which merely delays performance. Importantly, financial difficulties, managerial decisions, or

business risks do not qualify as force majeure, as they remain within the debtor's sphere of responsibility. The designation of the Covid-19 pandemic as a national non-natural disaster through Presidential Decree Number 12 of 2020 has raised significant debate regarding its qualification as force majeure in contractual relations. Scholarly opinions and judicial practice emphasize that the pandemic does not automatically release parties from contractual liability. The party invoking force majeure bears the burden of proving a direct causal relationship between the pandemic and the inability to perform the obligation. Where the contractual obligation had already fallen due prior to the pandemic, or where non-performance resulted from internal business decisions, the force majeure defense cannot be justified. Accordingly, judicial considerations in breach of contract cases, such as Decision Number 130/Pdt.G/2023/PN Medan, reaffirm the principles of legal certainty, good faith, and the binding force of agreements.

## **METHOD**

### **1. Types of research**

This study employs normative legal research. The purpose of conducting this research is to examine and identify various legal provisions, legal principles, and expert opinions that are relevant to the legal issues under consideration. In order to relate the legal facts contained in Decision Number 130/Pdt.G/2023/PN Mdn, the author reviews and compares several legal norms and regulations related to lease agreements, the concept of force majeure, and provisions governing breach of contract.

### **2. Nature of the Research**

This research is descriptive in nature and applies a normative legal approach to describe and explain legal issues that arise in society and subsequently relate them to the positive law in force in Indonesia. The legal topics examined in this study include breach of contract, lease, and lease agreements within the context of shop-house lease disputes, which are then reviewed and analyzed.

### **3. Types of Data**

As this research falls within the category of normative legal research, the data used consist of secondary data, including:

- a. Primary legal materials, consisting of Decision Number 130/Pdt.G/2023/PN Mdn and the Indonesian Civil Code, which constitute legal sources containing legal rules and provisions arranged hierarchically.
- b. Secondary legal materials, consisting of legal sources that support and strengthen primary legal texts. Furthermore, concepts, textbooks, expert opinions, and legal journals are examples of principal legal documents that contain various information regarding legal substance and its application. These sources are included as secondary legal materials considered in this study.
- c. Tertiary legal materials, consisting of legal dictionaries, the Great Dictionary of the Indonesian Language (Kamus Besar Bahasa Indonesia), and other sources accessed through information technology, particularly the internet, which serve to explain and support primary and secondary legal materials.

### **4. Data collection technique**

By utilizing various legal sources, including primary, secondary, and tertiary legal materials, this research applies data collection techniques through library research.

### **5. Data Analysis Technique**

Data analysis in normative legal research is carried out using a qualitative approach, which includes interpretation, explanation, and systematic linkage between primary, secondary, and tertiary legal materials. Through this analysis, the researcher interprets the provisions of the Indonesian Civil Code related to agreements, the validity requirements of agreements, breach of contract, and force majeure, and then connects them with doctrinal theories and their practical application in shop-house lease disputes. The results of the analysis are subsequently presented in a juridical descriptive manner, namely by describing

positive legal provisions while also providing a critical assessment of their relevance and application in actual cases.

## **RESULTS AND DISCUSSION**

### **The Use of Force Majeure by the Owner as a Reason to Be Released from Breach of Contract for Shop-House Renovation Based on Decision Number 130/Pdt.G/2023/PN Medan**

An agreement is formed when the parties reach consensus and thereafter becomes legally binding upon the parties who enter into it (*pacta sunt servanda*). Such an agreement establishes rights and obligations that must be performed in a balanced manner. A breach of contract occurs when one of the parties fails to perform its part of the agreement. Negligence, intentional conduct, or circumstances beyond control (*force majeure*) may all contribute to such a breach. Although the Indonesian Civil Code does not explicitly define *force majeure*, the provisions of Articles 1244 and 1245 provide a basis that *force majeure* constitutes an event occurring beyond human will, such as natural disasters, war, pandemics, or other similar events, which may be used as grounds by a party to fail to perform an agreement as it should be performed.

It is recognized that there are two categories of *force majeure*, namely absolute and relative. When disasters such as volcanic eruptions, floods, or earthquakes cause the debtor to be completely unable to fulfill the obligations owed to the creditor, this condition is classified as absolute *force majeure*. Conversely, relative *force majeure* refers to circumstances in which the debtor is still able to perform the obligations imposed upon him. Such *force majeure* merely results in changes to the timing of the performance of rights and obligations between the creditor and the debtor and does not create new risks. The lease agreement that was registered (*waarmerking*) before Notary Adi Pinem under Number 191/PDPSDBT/VII/2016 served as the basis for the legal relationship between the Plaintiff (*lessee*) and the Defendant (*shop-house owner*) in this case. The agreement stipulated a lease period of fifteen years commencing from 20 January 2018 until 20 January 2033, with the Defendant being obliged to carry out building renovation no later than 20 January 2018, as stated in Article 4 of the agreement.

Problems arose when the Defendant failed to perform the renovation obligation within the stipulated timeframe, resulting in the Plaintiff being unable to occupy the shop-house as agreed. In the defense, the Defendant argued that the Covid-19 pandemic had affected financial conditions, causing the funds initially allocated for renovation to be diverted to sustain other business activities. To assess the validity of this argument, it is necessary to examine whether the circumstances experienced by the Defendant fulfill the elements of *force majeure*. Chronologically, the renovation obligation should have been completed no later than 20 January 2018, whereas the Covid-19 pandemic only occurred in 2020. Thus, from a temporal perspective, the breach of contract had already occurred prior to the emergence of the pandemic. This fact indicates that the pandemic had no direct causal relationship with the failure to perform the renovation obligation within the agreed timeframe.

Although the Covid-19 pandemic may be categorized as an extraordinary event, juridically not every impact of such an event automatically eliminates contractual liability. *Force majeure* requires the existence of absolute impossibility in performing the obligation, not merely relative difficulty or a decline in economic conditions. In this case, the renovation of the shop-house was not proven to be impossible to perform; rather, it was not carried out because the Defendant diverted the funds for other business interests. Such diversion of funds constituted a decision made by the Defendant, and therefore cannot be categorized as *force majeure* that releases legal liability. The financial difficulties experienced by the Defendant essentially constitute internal risks in conducting business activities. In the law of obligations, risks arising from business management or the financial condition of the debtor fall within the scope of responsibility of the party concerned. *Force majeure* requires the existence of an external event beyond the control of the parties and unforeseeable in advance. The diversion of renovation funds for other business purposes demonstrates a managerial decision by the Defendant, and thus is more appropriately classified as a business risk rather than a *force majeure* condition that may release liability for breach of contract.

Furthermore, the Defendant, as the party invoking force majeure, bears the burden of proof regarding the truth of such claim. Normatively, the burden of proof is regulated in Article 1865 of the Indonesian Civil Code, which provides that any person asserting the existence of a right or a particular fact is legally obliged to present relevant evidence to support such assertion, a principle known as *actori incumbit probatio*. Accordingly, the Defendant who asserted force majeure was obliged to prove that the Covid-19 pandemic directly and unavoidably prevented the performance of the renovation obligation. The failure to fulfill this burden of proof resulted in the force majeure argument being legally unacceptable. Based on the considerations in the decision, no evidence was found to demonstrate that the pandemic directly and absolutely prevented the performance of the renovation obligation. The circumstances reflected financial difficulties in performing the agreement, which under the law do not eliminate obligations based on the principle of *pacta sunt servanda* and the principle of good faith in performing agreements as stipulated in Article 1338 paragraph (3) of the Indonesian Civil Code. Therefore, the force majeure argument submitted by the Defendant in this case was deemed not to meet the established juridical criteria and consequently could not serve as a basis to release the Defendant from legal liability for breach of contract.

### **Judges' Legal Considerations in Deciding a Breach of Contract Case in a Shop-House Lease Agreement Based on Decision Number 130/Pdt.G/2023/PN Mdn**

The principle of *motiverings plicht* obliges courts to set out explicit legal reasoning in every decision in order to ensure legal accountability for the operative part of the judgment imposed on the parties. Under this principle, judges are required to provide adequate considerations in each decision. This obligation is stipulated in Article 25 paragraph (1) of Law Number 4 of 2004 in conjunction with Article 50 paragraph (1) of Law Number 48 of 2009 concerning Judicial Power, which provides that every court decision must include reasons and legal grounds forming the basis for adjudicating a case, whether derived from statutory law or unwritten legal principles. Judicial considerations constitute a primary factor in producing decisions that reflect justice and legal certainty. Through structured and clear reasoning, a decision not only presents the final outcome but also demonstrates a logical and accountable legal reasoning process. This provides benefits both to the disputing parties and to society at large, as justice is sought to be realized optimally through rational and transparent legal argumentation.

From a normative juridical perspective, the basis of judges' legal considerations also refers to the provisions of Article 184 paragraph (1) of the HIR in conjunction with Article 195 paragraph (1) of the RBg, which regulate evidentiary matters in civil cases. Therefore, the reasons contained in a decision must be systematic, factual, and consistent with the values of propriety and justice. In order to maintain the integrity of the decision and avoid any appearance of partiality toward either party, the Panel of Judges is obliged to uphold the principle of neutrality. The legal foundation for the authority and independence of the judiciary is provided in Chapter IX of the 1945 Constitution of the Republic of Indonesia and Law Number 48 of 2009 concerning Judicial Power.

In this case, the Panel of Judges declared that Lease Agreement Number 191/PDPSDBT/VII/2016 was valid and binding based on documentary evidence P-1 through P-3. The agreement clearly stipulated the lease period, the amount of payment, and the renovation obligation as a prerequisite for the commencement of the lease period. The judges considered that the Defendant had received funds in the amount of IDR 250,000,000 for renovation purposes, which should have been completed no later than 20 January 2018. However, this obligation was never fulfilled, despite the Plaintiff having issued two formal warnings. Accordingly, the elements of breach of contract as referred to in Article 1243 of the Indonesian Civil Code were deemed to have been satisfied. The force majeure argument based on the Covid-19 pandemic submitted by the Defendant was rejected by the Panel of Judges. The judges reasoned that the renovation obligation had fallen due prior to the occurrence of the pandemic, and therefore there was no direct relationship between the pandemic and the failure to perform the obligation. Furthermore, no evidence was found indicating that the circumstances in question actually hindered the performance of the agreed obligation. The fact that the renovation funds were diverted for other business purposes instead

demonstrated that the inability to perform arose from the Defendant's own actions. The Panel of Judges also considered that the Plaintiff had demonstrated good faith by first pursuing settlement efforts through formal warnings prior to filing the lawsuit. Accordingly, the claim was deemed to have a sufficiently strong legal basis. The decision partially granted the claim by affirming that the agreement remained valid and binding in accordance with Article 1338 of the Indonesian Civil Code. Meanwhile, the claims for coercive money (*dwangsom*) and immediate enforceability (*uitvoerbaar bij voorraad*) were rejected because they did not meet the applicable procedural law requirements, reflecting the judges' prudence in maintaining proportionality in the decision.

The researcher is of the view that the Panel of Judges' reasoning in Decision Number 130/Pdt.G/2023/PN Medan demonstrates strong consistency in upholding the fundamental principles of the law of obligations. The rejection of the force majeure argument was carried out through a careful examination of the elements of force majeure as regulated in Articles 1244 and 1245 of the Indonesian Civil Code. The Panel of Judges appropriately distinguished between absolute impossibility in performing an obligation and economic difficulties arising in the performance of an agreement. This distinction is significant, because without clear boundaries, the concept of force majeure could be expanded disproportionately and potentially obscure contractual liability.

The judges' considerations emphasizing the chronological aspect also reflect thoroughness in assessing the causal relationship between the Covid-19 pandemic and the renovation obligation. Given the fact that the obligation had fallen due before the pandemic occurred, logically and juridically there was no basis to associate the pandemic with negligence that had already arisen earlier. This approach reflects the consistent application of the principle of *pacta sunt servanda* and simultaneously strengthens legal certainty in long-term contractual relationships. On the other hand, the Panel of Judges' decision to reject the claims for *dwangsom* and *uitvoerbaar bij voorraad* demonstrates that the judgment was rendered in a measured and proportional manner. The judges did not focus solely on affirming the existence of breach of contract, but also considered the limits of the applicable procedural law so that the legal consequences imposed would remain balanced. Thus, the legal considerations in this decision not only fulfill the formal obligation to provide reasons, but also reflect systematic and responsible legal reasoning.

From an academic perspective, this decision affirms that a pandemic does not automatically eliminate contractual obligations. The burden of proof fully rests with the party invoking force majeure, and such proof must demonstrate the existence of a real obstacle that renders performance impossible. This stance illustrates that freedom of contract remains embedded within a framework of legal responsibility that cannot be set aside without a lawful basis. Therefore, this decision demonstrates judicial consistency in upholding the fundamental principles of contract law, while simultaneously integrating legal certainty with a sense of justice in the implementation of civil legal relations.

## CONCLUSION

The force majeure argument submitted by the lessor in Decision Number 130/Pdt.G/2023/PN Medan does not meet the qualifications of force majeure as referred to in Articles 1244 and 1245 of the Indonesian Civil Code. Juridically, there is no causal relationship between the Covid-19 pandemic and the failure to perform the renovation obligation, given that such obligation had already fallen due prior to the occurrence of the pandemic. The financial difficulties experienced by the Defendant are more appropriately classified as business risks that fall within the Defendant's responsibility, rather than as an absolute impossibility to perform the obligation. Consequently, the force majeure argument lacks legal force to negate the status of breach of contract. The legal considerations of the Panel of Judges in the decision consistently uphold the principle of *pacta sunt servanda* and the principle of good faith, while simultaneously affirming that the burden of proof regarding the existence of force majeure rests with the party invoking it. This decision clarifies the conceptual boundaries of force majeure so that it is not excessively expanded in the context of a national crisis.

The researcher is of the view that the formulation of force majeure clauses in agreements, particularly long-term agreements, should be carried out with greater precision by detailing objective parameters regarding their nature, scope, and legal consequences for the performance of obligations. Such regulatory clarity is essential to prevent the misuse of force majeure arguments as instruments for avoiding contractual liability. Furthermore, the parties to lease agreements should prioritize the principle of good faith and prudence in managing the obligations that have been agreed upon, so that the balance of rights and obligations is maintained and legal certainty in contractual relationships can be optimally realized.

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Maria Simamora **et al**

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