

Shackling Persons with Mental Disability within the Perspective of International Human Rights Law and its Implementation in Indonesia

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Article Info	Abstract
<p>Keywords: CRPD, Human Rights Law, Indonesia, Mental Disability, Shackling.</p> <p>DOI: 10.25041/lajil.v5i1.2895</p>	<p><i>This doctrinal and empirical research investigated the implementation of human rights protection for persons with a mental disability being shackled and its challenges in Indonesia. The results of this research showed that the laws and regulations concerning persons with mental disabilities are not yet aligned with international human rights law. The government's efforts to ban shackling have reduced the number of shackling cases. Unfortunately, the community and family still have stigma, discrimination, and lack of knowledge about mental health issues. These conditions can hinder a mentally disabled person from getting their rights fulfilled. It is recommended that the government revise the laws and regulations to align with international law in this field. Furthermore, the government is expected to enhance its efforts in addressing this issue by allocating more funds, human resources, facilities, and access to affordable, adequate, rights-based mental health services.</i></p>

A. Introduction

Disabled persons are often marginalized in Indonesia. Paul Hunt, the first Special Rapporteur on the Right to Health, reported that people with mental disabilities are "the most neglected, marginalized, and vulnerable group." They experience human rights violations in various aspects of life and within their community, such as shackling. In Indonesia, the shackling practice has been banned since 1977. However, even to date, shackling mentally disabled persons remains common in various regions of Indonesia, including Aceh Province, particularly in Aceh Besar District.

Families and the community sometimes treat people with mental illness inhumanely for various reasons. *Pasung* is a local term for shackling in Indonesia. According to Article 1 point

3 of the Regulation of the Minister of Health of the Republic of Indonesia Number 54, the Year 2017, concerning The Handling of Shackling in People with Mental Disorders:

*"Shackling is any form of restriction of movement of People with Mental Disorders (ODGJ) by their families or communities results in the loss of freedom of ODGJ, including the loss of the right to health services to assist recovery."*¹

Human Rights Watch (HRW) focuses on the global issue of shackling in its most recent study published in honor of World Mental Health Day. 60 of the 110 countries HRW surveyed still apply shackling. HRW stated that shackling is the most egregious, old-fashioned, and primitive form of physical restraint.² It is primarily used in non-medical settings, and no international or regional law has been made to eradicate the practice. It is challenging to pinpoint the exact scope of this practice without comprehensive global data. According to Human Rights Watch, at least 100,000 people worldwide with mental health disorders have been shackled, chained, or confined in a small space.³

According to Aceh Provincial Health Office data, 21,414 people had mental illness in Aceh, and around 142 people had been shackled as of 2019. In Aceh Besar, there were 2,880 people with mental illness in 2019, 8 of which were shackled.⁴

To eradicate the practice of shackling, the Government of Aceh launched the *Aceh Bebas Pasung*, or Free Shackling Aceh program, in 2010 as part of a broad mental health service community development program. This is a realization of the human rights protections, and Aceh was the first pioneer in Indonesia.⁵ Governor Irwandi Yusuf then continued this program as one of the programs in his second term as Governor of Aceh with the target that by 2022, Aceh will be free from the practice of shackling.⁶

Inspired by the program initiated by the Government of Aceh, the Ministry of Health of the Republic of Indonesia initiated a similar program at the national level in 2014. Indonesia was expected to eradicate shackling by 2019 completely. However, this program was not successful, and it received criticism from various parties because it only focused on releasing the shackled persons without providing access to adequate mental health services. Hence, the family decided to shackle their mentally disabled family members again.⁷

An international human rights law - Convention on People with Disabilities - particularly governs people with disabilities and mental disorders. Indonesia is responsible for defending people with mental disabilities at the national and regional levels as a state party to the CRPD. Indonesia must enact laws, policies, and practices that prevent discrimination against individuals with mental disabilities and modify or repeal those that currently perpetuate such discrimination. Local governments are encouraged to create rules to raise awareness and

¹ Human Rights Watch, "Living in Chains: Shackling of People with Psychosocial Disabilities Worldwide", (2020).

² *Ibid.*

³ *Ibid.*

⁴ *Ibid.*

⁵ Ibrahim Puteh, M Marthoenis and Harry Minas, "Aceh Free *Pasung*: "Releasing the mentally ill from physical restraint", *International Journal of Mental Health System*, (2011), 5:10. doi: 10.1186/1752-4458-5-10

⁶ Waspadaaceh.com "Tahun 2022, Penderita Gangguan Jiwa di Aceh Bebas dari Belenggu *Pasung*", August, 31, 2018, Available online <https://waspadaaceh.com/tahun-2022-penderita-gangguan-jiwa-di-aceh-bebas-dari-belenggu-pasung/>

⁷ Felani, Isneningtyas, *HAM Penyandang Disabilitas Mental di Panti Rehabilitasi Sosial*, Komisi Nasional Hak Asasi Manusia, (2018), p. 33.

implementation of the Convention's obligations in 34 provinces of Indonesia. However, only 28 provinces in Indonesia have made the regulations.⁸ Meanwhile, in Aceh, the law related to *Qanun*, which concerns the rights of disabled persons, is still being prepared.

In regards to the background, as mentioned earlier, the problems of this research were formulated as follows: (1) How is the regulation regarding the human rights of persons with mental disabilities according to international and national law? (2) What is the Indonesian government's responsibility in protecting the rights of persons with mental disabilities? (3) What factors hinder the fulfillment of the human rights of persons with mental disabilities in Indonesia?

This normative juridical research also employed empirical methods in analyzing a legal fact based on comparing the reality and the laws and regulations as positive legal provisions.⁹ This research data was obtained through library research and field research in the forms of international agreements, laws and regulations, literature, and other official documents. Direct observations were also conducted through interviews with informants and respondents.

The novelty of this research is in its investigation of the implementation of human rights protection for persons with mental disability who are being shackled and its challenges in Indonesia. The research urges implementing laws and regulations in Indonesia and Aceh Province to be aligned with CRPD despite Indonesia's unconditional ratification of the CRPD Convention. No international, regional, or local cooperation has been made to ban the practice of shackling, particularly in Aceh Province, Indonesia.

B. Discussion

1. Regulations Regarding the Human Rights of Persons with Mental Disabilities According to International Law and National Law

a. Convention on the Rights of Persons with Disabilities

CRPD does not specifically address the shackling issue, but it contains provisions that relate to the rights that could potentially be violated concerning shackling, for instance, the right to health, right to liberty, and security of the person, freedom from torture or cruel, inhuman or degrading treatment or punishment, and the right to live in the community.¹⁰

The less specific wording in the International Bill of Rights and other conventions has long hindered the application of these instruments.¹¹ Moreover, these rules are not binding.¹² This situation prompted the international community to issue a specific convention to protect the rights of persons with disabilities, including persons with mental disabilities. The Convention protects the rights of the world's fastest-growing minority, where over one billion people have disabilities.¹³

Persons with disabilities need to be recognized and helped to be able to perform their roles in society effectively and have equal access to human rights. Upon this belief, the Committee observed the developments made by state parties. In implementing the Convention, the state

⁸ First Report of the Republic of Indonesia on the Implementation of the United Nations Convention on the Rights of Persons with Disabilities, (2016, p. 7.

⁹ Abdulkadir Muhammad, *Hukum dan Penelitian Hukum*, Bandung: PT. Citra Aditya Bakti, (2004), p.134.

¹⁰ Op.cit, Human Rights Watch.

¹¹ Carla A. Arena Ventura, "International Law, Mental Health and Human Rights", *The Center for Civil & Human Rights*, University of Notre Dame, (2014).

¹² Arlene S. Kanter, *The Development of Disability Rights under International Law: From Charity to Human Rights*, Routledge, (2015), p. 21.

¹³ *Ibid*.

needs to involve the representatives of civil society, especially persons with disabilities, to monitor the implementation process of the Convention. States parties that ratified the Optional Protocol to the CRPD recognized the competence of the CRPD Committee, which has issued seven General Comments on several articles in the CRPD.¹⁴

b. Laws and Regulations Regarding Shackling and the Protection of the Human Rights of Persons with Mental Disabilities in Indonesia

Since ratifying the Convention on the Rights of Persons with Disabilities (CRPD), Indonesia has committed to protecting, respecting, and promoting the rights of persons with disabilities. This commitment is reflected in various laws and regulations designed to safeguard the human rights of individuals with mental disabilities, both at national and regional levels.

1. Law Number 18 the Year 2014 Concerning Mental Health

Based on Law No. 18 of 2014, which regulates mental health, the responsibility of the central government within the national scope is to provide facilities for mental health to remote areas through systemic integration of the health of a person's soul in public services regarding health with care services at affordable prices and distances as a maximum availability for people with disabilities who have mental disorders. There is also a requirement to train a sufficient number of professionals in mental health. This provision also focuses on a community-based facility many people can access. Its implementation still refers to government monitoring regarding the standardization of treatment and licensing of health services. This regulation provides complete information related to mental health as a form of protection against exploitation, violence, and threats of abandonment. This regulation raises awareness of this issue and eliminates labeling that leads to discrimination against people with disabilities. Mass media also need to frame the positive sides of people with disabilities. Furthermore, this law also imposes sanctions on violence, neglect, or confinement and acts against the substance of human rights mentioned in Article 86 of the Mental Health Law.

2. Law Number 8 the Year 2016 Concerning Persons with Disabilities

According to Article 1 Point 1 of Law No.8, a disabled person is anyone who has long-term physical, intellectual, psychical, or sensory restrictions and who may encounter barriers and difficulties in their interactions with others while exercising equal rights. This Rule's definition of people with disabilities is consistent with the one used by the CRPD. In contrast, "individuals with mental problems" are defined in the clarification of Article 4 paragraph (1) point c as individuals who have disruptions in the function of cognition, emotion, and behavior.

The law also contained criminal provisions to protect persons with disabilities from human rights violations, as mentioned in Article 145. The Law specifically addresses the issue of shackling within its provisions, highlighting its violation of human rights. Article 6, which focuses on the right to life, explicitly includes the right to be free from neglect and shackles, making shackling a direct violation of this right as per Law Number 8 of 2016. Furthermore, the explanatory note of Article 9, point g, of the Disability Law clarifies that shackling constitutes a form of pressure, violence, persecution, discrimination, and the confiscation or expropriation of property. This reinforces the legal stance against shackling.

¹⁴ Committee on the Rights of Persons with Disabilities, <https://www.ohchr.org/EN/HRBodies/CRPD/Pages/GC.aspx>

This Ministerial regulation issued by the Minister of Health is a derivative rule of the Mental Health Law, specifically regulating shackling. The Regulation of the Minister of Health Number 54 of the Year 2017 states that shackling people with mental disorders is against human values and a violation of human rights.

3. Regulation of the Minister of Social Affairs Number 12 the Year 2018 concerning Guidelines for Prevention and Handling of Shackling for Persons with Mental Disabilities

This regulation is addressed to ministries/agencies, district/city local governments, and the public to serve as guidelines in preventing and dealing with the shackling issue. Prevention is carried out through information dissemination and education. The regulation enforces the registration of disabled persons in the National Health Insurance, independently either as wage earners or as Contribution Assistance Recipients. The government, local governments, and the community also contact the victims and provide rehabilitation programs.

2. The Government of Indonesia's Responsibility in Providing Protection for the Human Rights of Persons with Mental Disabilities

Indonesia ratified the CRPD through Law Number 19 in 2011 concerning the Ratification of the Convention on the Rights of Persons with Disabilities. Indonesia is legally obligated to protect, promote, and fulfill the rights of persons with disabilities, as stipulated by the CRPD, which is applicable within its jurisdiction. Furthermore, Indonesia must enact regulations that align with the CRPD's provisions.

Mental Health Law is not fully aligned with CRPD as it still contains several unclear provisions. For instance, the law allows others to consent to medical treatment on behalf of persons with mental disabilities if they are deemed "incapable of making decisions" without going through a judicial process as outlined in Article 21 paragraph (3) in Mental Health Law. This scheme is considered discrimination against persons with mental disabilities and, thus, against the CRPD. Meanwhile, it might be quite challenging to make logical decisions for mentally disabled persons. In that case, decisions are made using a supported decision-making system based on the best considerations of will and preference and the best interest of the individual, both as to what services are appropriate to provide and how the wills and preferences of the individual are determined. Article 22 of the Mental Health Law also allows medical personnel to force treatment on persons with mental disabilities whose thoughts and/or behaviors are threatening to themselves and others. These two articles contradict the CRPD.

Article 1 Point 3 of the Mental Health Law concerning people with mental illness does not include environmental factors related to this issue. Meanwhile, CRPD considers disability as a concept that develops and results from limited abilities, interactions, and behavioral barriers from the environment that hinder the full and effective participation of persons with mental disabilities. In other words, CRPD does not view people with mental disabilities as different from typical persons. However, the community often prevents persons with mental disabilities from self-development and full participation in the community. This condition marginalizes persons with mental disability, and their rights are often neglected.

The National Commission for Disabilities (KND) was formed through Presidential Decree Number 68 of 2020, which regulates the selection, composition, and function of the National Commission for Disabilities as mandated in the Disability Law. However, this raises problems because, in Disability Law, KND is directly responsible to the President. At the same time,

Presidential Decree Number 68, the Year 2020, places KND under the auspices of the Ministry of Social Affairs. This is contrary to what is mandated by the Disability Law and can interfere with the institution's independence in carrying out its functions.

a. Government Responsibilities Relating Shackling

Indonesia's government and local governments have tried to eradicate shackling practices, one of which is through the *Aceh Bebas Pasung* program. This program releases persons with mental disabilities from being shackled to be taken to the hospital for proper care before returning them to their homes. This program is the first program in Indonesia made to release people with disability from being shackled.¹⁵ Although the number of shackling victims has decreased, shackling still exists in Indonesia, especially in Aceh.

Kimberly Clair asserts that recent efforts in Indonesia to safeguard the human rights of people who are chained, shackled, or imprisoned due to their mental illness offer a crystal-clear illustration of the disaggregated strategy.¹⁶ During the visit in March 2017, UN health expert Dainius Puras urged the Indonesian government to "step up" its campaign against *pasung* and ensure that shackles are not "replaced by other forms of restraint and confinement." which violate human rights.¹⁷

Currently, Aceh does not have a specific legal regulation that addresses shackling. Regulation of the Governor of West Nusa Tenggara Number 22, the Year 2013, addresses the shackling in West Nusa Tenggara Province. Aceh province lacks a specific qanun (local law) dedicated to mental health, as well as a qanun that addresses the rights and needs of persons with disabilities. Nevertheless, mental health is covered under a broader legislative framework, as seen in Qanun Number 4 of the Year 2010, which pertains to health issues in general. In contrast, West Java stands out as an example within Indonesia, being the first province to enact a Regional Regulation (*Perda*) specifically focusing on mental health. This demonstrates a more targeted approach to addressing mental health concerns at the regional level. Additionally, matters relating to persons with mental disabilities in Aceh are incorporated within the broader scope of Social Welfare, as outlined in Aceh Qanun Number 11 of 2013.

In this *Qanun*, the Aceh government focuses on providing social assistance to several groups, including persons with mental disabilities. However, until now, there has been no government regulation for implementing social welfare services for persons with disabilities as mandated in Article 37 of Qanun Number 11 of the Year 2013. The definition of persons with disabilities adopted in this Qanun is:

"Every person with a physical and/or mental disorder that can interfere with or is an obstacle for him to perform properly, consisting of persons with physical disabilities, persons with mental disabilities, and people with physical and mental disabilities."

¹⁵ Marthoenis, Marion Aichberger, Ibrahim Puteh, Roslaini, Meryam Schouler-Ocak, "Releasing the mentally ill from physical restraint: An experience from a developing country", Conference Paper, (2012): p. 293-295.

¹⁶ James Gomez & Robin Ramcharan. (2019). *National Human Rights Institution in Southeast Asia*, Palgrave Macmillan, (2019), p. 234-235.

¹⁷ Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health on his mission to Indonesia. (2018). A/HRC/38/36/Add.1.

The definition of persons with disabilities in this *Qanun* is not clear, and the offensive term “handicapped” is used. Such a definition creates a sense that a person's disability hinders them from performing activities as they should. This is contrary to the view of the CRPD, which sees disability as a problem that arises due to the environment and society's treatment of persons with disabilities. Article 75 paragraph (1) of the Qanun Number 4, the Year 2010 concerning health, imposes an obligation on the Aceh Government to eradicate the practice of shackling and eliminate public stigma against persons with mental disabilities.

In dealing with shackling in Aceh, especially in Aceh Besar District, Dr. Deni Yaneva, M. Kes mentioned the presence of human rights-based programs such as daycare for persons with mental disabilities. This program is expected to help eradicate shackling practices. This program is similar to the concept of *Pendidikan Anak Usia Dini* (PAUD), or childhood education, where persons with mental disabilities gather with other persons with mental disabilities.

3. Factors Hindered to the Fulfillment of the Rights of Persons with Mental Disability

Shackling is considered an iceberg phenomenon. Although it has been banned since 1977, this inhumane practice is still common today and is carried out in different ways. From the interviews through the WhatsApp application with Dr. Deni Yaneva and M. Kes, a few factors led to shackling, especially in Aceh Besar, were:

- a. Economic constraints faced by the patient's family.
- b. Violent behavior.
- c. Sometimes, the patient does not want to take medication.
- d. Relapse: after being declared cured by the Mental Hospital and sent back home again, the patient does not want to take medicine and thus has a relapse.
- e. The patient's family lacks knowledge about mental health and how to deal with patients when they relapse.

Apart from the incompatibility of the law with the CRPD and the absence of legal regulations or regulations regarding mental health and the rights of persons with disabilities, Dr. Deni Yaneva, M. Kes and Robby Mulia Manurung from the National Human Rights Commission (*Komnas HAM*) of the Republic of Indonesia Aceh Representative Office mentioned the obstacles in fulfilling the needs of people with mental disabilities. Firstly, the challenge in coordinating and cooperating within communities stems from the prevailing perception that only health professionals are equipped to manage psychiatric issues or those concerning individuals with mental health conditions. Furthermore, the significant stigma associated with mental disabilities poses a considerable obstacle to addressing the practice of shackling and ensuring the rights of persons with mental disabilities are met.

This stigma has been the cause of discrimination against persons with mental disabilities in Indonesia, especially in Aceh. They are considered dangerous and different; they must be shackled, isolated, discarded, or concentrated in specific places to prevent them from disturbing other people.¹⁸ This situation also creates a dilemma between protecting the patient himself and the community due to his behavior or protecting the rights of the person with a mental disability.

¹⁸ Mulia Robby Manurung, Subkoordinator Bidang Pelayanan Pengaduan Komisi Nasional Hak Asasi Manusia Kantor Perwakilan Aceh, interview by email on October 1 2020.

It is also important to address issues related to the lack of knowledge about mental health and how to deal with persons with mental disabilities. Severe mental disorders such as schizophrenia, bipolar, and depression are common but are often ignored as health problems due to the lack of public awareness of mental health.¹⁹ In addition, patients often refuse to be treated by someone other than the one who usually takes care of them.²⁰ The number of facilities, infrastructure, and mental health workers is not proportional to the number of people with mental disabilities. Currently, the Indonesian government has allocated about 1 percent of the total health budget to handling mental health issues with approximately 3 percent of GDP.²¹

dr. Deni Yeneva added that Obstacles related to the COVID-19 pandemic were not significant. Health workers still carried out home visits to monitor the condition of shackling and provide treatment. The visit could not be held during the pandemic due to social restrictions.²² In dealing with shackling in Aceh Besar, the Aceh Besar District Health Office ensures that although shackling still can be found in Aceh Besar, the government ensures that no one is held in shackling in extreme ways such as being tied up, chained, or placed outside the house or in huts and cages. They are only locked up in a proper room.²³

However, shackling is still a practice that cannot be justified, is inhumane, and violates human rights. Shackling will not solve any problem used as an excuse by families of persons with mental disabilities to put them in shackling. Furthermore, it only increases the suffering of people with mental disabilities, both mentally and physically, as a result of the practice.

Since Indonesia has not ratified the Optional Protocol to the CRPD, relevant individuals or organizations cannot directly report allegations of human rights violations against them. The Aceh Representative of *Komnas HAM* (the National Commission on Human Rights) received a complaint concerning alleged human rights violations against individuals with disabilities. This particular case involves a person with a mental disability, identified by the initials MA, a resident of Gampong Tibang in the Syiah Kuala Subdistrict of Banda Aceh City. MA was fatally shot by a suspected member of the Syiah Kuala Police on January 28, 2020, due to perceived threats to the safety of residents and police officers attempting to detain him. Previously, on the same date, MA had slashed a motorcyclist with a machete who happened to pass him on the road. MA also often walks around with a machete on the streets around the Tibang and Alue Naga villages.²⁴

According to Drew et al., one of the reasons why human rights violations continue to occur is that these violations are not reported.²⁵ This condition shows a lack of awareness or concern from concerned parties to report alleged human rights violations. Drew et al. also stated that the complaint mechanism must be accessible, encouraging and enabling persons with mental disabilities, their relatives, and human rights activists to report the cases safely. The lack of reports highlights a broader issue: a significant number of individuals and relevant stakeholders lack awareness regarding mental health, human rights, and the needs and rights of persons with

¹⁹ Harry Minas, *ASEAN Mental Health System*, The ASEAN Secretariat, (2016), p. 42.

²⁰ dr. Deni Yeneva, M. Kes, Op. cit.

²¹ Insideindonesia.org "The Future of Mental Health Care in Indonesia" July, 24, 2020, Available online <https://www.insideindonesia.org/the-future-of-mental-health-care-in-indonesia-6>.

²² dr. Deni Yeneva, M. Kes, Op. cit.

²³ dr. Deni Yaneva, M. Kes, Op. cit.

²⁴ Mulia Robby Manurung, Loc. cit.

²⁵ Natalie Drew et al., "Human rights violations of people with mental and psychosocial disabilities: An unresolved global crisis", *The Lancet*, (2011), Vol, 378, 1664:1675. doi: 10.1016/S0140-6736(11)61458-X

mental disabilities. Regulations that do not fully align with the Convention on the Rights of Persons with Disabilities (CRPD) and its paradigm shift towards inclusivity and rights-based approaches present further barriers to ensuring the rights of individuals with mental disabilities are met. Additionally, the absence of specific legal rules or qanuns in Aceh dedicated to mental health and the rights of persons with disabilities compounds these challenges, hindering the clear, effective, and efficient implementation of measures to safeguard these rights.

C. Conclusion

Laws and regulations related to disability and mental health in Indonesia and Aceh Province have not been fully aligned with the provisions of CRPD. No international, regional, or local cooperation has been aimed at eradicating the practice of shackling. Despite not being fully optimized or aligned with the Convention on the Rights of Persons with Disabilities (CRPD), some progress has been made in promoting, protecting, and fulfilling the rights of people with mental disabilities in Indonesia, including in the Aceh province. The CRPD's paradigm shift serves as a crucial guideline for this endeavor. In addressing the issue of shackling in Indonesia, particularly in Aceh, the government has made strides to reduce the incidence of this practice. Nevertheless, merely liberating individuals from shackling is not enough, as instances of re-shackling post-treatment remain a concern.

The funds and human resources allocated to the mental health sector also need improvement. Other obstacles are found in the community and family environment, such as stigma, discrimination, and inhumane behavior of the community, family, and environment around persons with mental disabilities. Lack of public knowledge and awareness about mental health issues is also an obstacle to fulfilling the rights of persons with mental disabilities.

D. Suggestion

Several suggestions can be made related to the subject matter of the discussion. It is important to revise the provisions of current CRPD regarding the definition of persons with mental disorders (ODGJ) in Article 1 point 3 of the Mental Health Law and Article 21 paragraph (3) of Law Number 18 of 2014 concerning Mental Health, as well as Article 22, comply with the CRPD. There is a need for separate legal regulations governing mental health, the rights of persons with disabilities and shackling in Aceh following the CRPD. The ratification of the CRPD Protocol is also necessary to optimize the protection the Indonesian government provides for the rights of persons with disabilities. Greater attention should be directed to mental health issues. The funds, human resources, facilities, or access to health services that are affordable, accessible, adequate, and human rights-based should be enhanced for persons with disabilities.

Relevant parties, such as professionals in the mental health field, advocacy organizations working in human rights for persons with disabilities, and the community, need to collaborate to protect the rights of persons with mental disabilities. In addition, under international law, persons with mental disabilities directly need to be involved in the making of decisions related to regulations on mental health issues. Central and local governments must also cooperate in protecting the rights of persons with mental disabilities and eliminate practices that violate the human rights of persons with mental disabilities, particularly the practice of shackling.

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