



## The Process Of Settlement Of Criminal Actions With Children Through Approach Restorative Justice

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### Abstract

Children are the mission and gift of God Almighty, and we must always protect them, because children are a nature that is attached to human dignity and rights and must be protected. Child protection is any activity that guarantees and protects children and their rights so that they can live, grow and participate as best as possible according to human dignity and receive protection from violence and discrimination. For children who have violated the law, it is strongly influenced by factors other than children, because children's criminal behavior is usually a process of imitating or being influenced by or influenced by the negative behavior of adults or people around them. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System includes a concept in the settlement of underage criminal cases, namely the concept of restorative justice. In solving criminal acts, this concept is realized by involving the perpetrator, victim, perpetrator / victim's family, and other related parties to find a fair solution that prioritizes restitution rather than revenge.

**Keywords:** Children; Restorative Justice; Child Crimes

### I. Introduction

Children are the mission and gift of God Almighty, and we must always protect them, because children are a nature that is attached to human dignity and rights and must be protected. Children are also the heirs to the ideals of the nation's struggle, their struggles, their potential and the young generation who have a strategic role and have special characteristics and characteristics to ensure the continuity of the state and the survival of the nation in the future.<sup>1</sup>

Child protection is any activity that guarantees and protects children and their rights so that they can live, grow, develop and participate as best as possible in accordance with human dignity and protection from violence and discrimination. This is considered a common interest, because in the last analysis, the progress of a country will be in the hands of the children..

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<sup>1</sup>Meilan Lestari, 2017, Hak Anak Untuk Mendapatkan Perlindungan Berdasarkan Peraturan Perundang-Undangan, *UIR Law Review* Volume 01, Number 02, October 2017.

Children who commit crimes are called criminals, or delinquents in criminal law. Romli Atmasasmita believes that juvenile crime refers to the behavior or behavior of children under the age of 18 and unmarried, which violates applicable laws and regulations and can endanger the personal development of the child.<sup>2</sup>

Law Number 11 of 2012 concerning the Juvenile Criminal Justice System includes the concept of settlement of underage criminal cases, namely the concept of restorative justice. In the settlement of criminal acts, this concept is realized by involving the perpetrator, victim, perpetrator / victim's family, and other related parties by prioritizing recovery rather than revenge to seek a fair settlement.

Restorative justice is a method in the process of reviewing criminal cases that focuses on the direct participation of perpetrators, victims and the community, who try to find a fair solution for all parties by resolving cases outside the criminal court. According to Article 5, paragraph 1, Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, "the juvenile criminal justice system must prioritize restorative justice methods". This confirms that in the case of children who break the law, priority should be given to methods of restorative justice.

Restorative justice emphasizes that children who do not break the law should not be punished, but must be educated and nurtured so that they can become better children, because the main purpose of restorative justice is to restore or restore their original condition and provide opportunities for children. the child is responsible for what he does. In the context of implementing restorative justice, it is necessary as a law enforcer to formulate a policy from the police to assess imported child cases with discretion, regardless of whether the case continues or is terminated..

Often there are several legal cases involving children who are suspected of not getting justice through private means through legal channels. This situation has become synonymous with society. One of them was the AAL case, only because he was suspected of stealing double flip flops in Palu, Central Sulawesi Province, and had to be tried in court. In addition, in the case of the deaths of 17 year old and 14 year old relatives who were detained by the Sijunjung West Sumatra Police, their bodies were covered with wounds and bruises during the examination. A similar case occurred in East Java, HDF

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<sup>2</sup>Romli Atmasasmita, 1983, *Juvenile Delinquency Problems*, Bandung: Armico, p. 40.

died in the Toulon Gagon Prison, East Java Province, died due to being beaten by fellow prisoners.<sup>3</sup>

Apart from the cases above, it is suspected that there are still many cases involving children that must be resolved through restorative justice methods through channels other than courts. However, due to the normative nature of law enforcement officials, many cases involving children are still being sent to court for processing. Courts, even where they shouldn't be imprisoned.

When dealing with children who are criminals, the police must always pay attention to the different conditions of adults and children. This must be handled in a restorative justice manner. The basis is to provide opportunities for perpetrators to become good again through informal channels through the use of community resources, and to try to provide judicial assistance to law enforcement officials for children who have committed crimes. offense..

Based on the description above, the author uses the "Banyumanik Police Process in the Settlement of Criminal Cases of Child Offenders through Restorative Justice" as the title of the paper.

## II. Method

The approach method used in this research is juridical empirical. Yudiris empirical is a research that is based on legislation and also uses research that is based on facts, realities and problems in the field.<sup>4</sup> This juridical empirical is a method that aims to solve research problems by examining the secondary data first and then doing it further by examining the primary data in the field. So the empirical juridical approach is a study that examines the process of solving criminal cases with child offenders through the approach *restorative justice* at the Banyumanik Police.

The approach method used is a juridical empirical approach, so the data collected comes from primary data as primary data and secondary data as supporting data. Primary data in this study were obtained by conducting field studies using interview techniques or

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<sup>3</sup>Bambang Sukoco, 2016, Pendekatan Restoratif Justice Sebagai Upaya Penyelesaian Cybercrime Dengan Pelaku Anak (Studi Kasus Penyelesaian Tindak Pidana Anak Usia Sekolah), Jurnal Law dan Justice(Vol 1, No. 1)

<sup>4</sup>Cholid Narbuko and Abu Achmadi, 2010, Metodologi Penelitian, Bumi Aksara, Jakarta, p. 80.

methods. Primary data is data obtained directly from data sources. This data was obtained by conducting direct interviews with respondents. The interview is a question and answer process in research that takes place orally by two or more people face to face listening directly to information or statements.<sup>5</sup> Secondary data is obtained by conducting library research (*liberary research*), namely by studying regulations, documents and books that are related to the problem being researched and the doctrines or opinions of scholars.<sup>6</sup> Secondary data collection is carried out with the aim of obtaining a theoretical basis and legal basis to stand on in analyzing the data from the research results later.

To classify primary data, data collection was carried out by means of interviews. Interviews (interviews) are conducted by asking questions related to the problem under study. The data required in this thesis are obtained through literature study and direct observation in the field.

In the discussion of this thesis, the author uses a qualitative analysis method, namely data analysis which is based on efforts to find principles and information sourced from respondents. The way of thinking to draw conclusions from the research conducted by the author uses the inductive method, which is a method for drawing conclusions based on a specific meaning and then concluded to a general understanding.<sup>7</sup>

The data obtained from the results of field research and literature are then analyzed using qualitative analysis methods to answer the problems that have been formulated, namely by analyzing the quality of the data obtained, in order to obtain a clear and relevant picture of the process of resolving criminal cases with child offenders through approach *restorative justice* at Banyumanik Police.

### III. Main Heading of the Analysis or Results

#### A. Crime

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<sup>5</sup>*Ibid*, p. 82.

<sup>6</sup>Bambang Sunggono, 2013., the 14th edition of *Metodologi Penelitian Hukum Rajawali Pers*, Jakarta, page 118.

<sup>7</sup>Suriasumantri, Jujun S. 2009, *Filsafat Ilmu Sebuah Pengantar Populer*. Pustaka Sinar Harapan, Jakarta, p. 60.

In criminal law there are several terms, such as crime, criminal offense, and criminal offense. The word "crime" comes from the Latin word delictum. In German it is called delict, in French it is called delit; in Dutch it is called delict, and sometimes the term strafbaar feit is also used. According to Pompeii, the term Stafbaar feit can be interpreted as :<sup>8</sup>

The perpetrator deliberately violates the guidelines (disturbs law and order), in this case to maintain order and order and protect public interest, it is necessary to punish the offender, or as an act against the law (trader) rechtsorde).

Many criminal law experts have proposed definitions of criminal offenses. According to Chairul Chuda, a criminal act refers to one or more acts which are subject to criminal sanctions. According to Moeljatno, what is meant by a criminal act is an act prohibited by the prohibition law accompanied by a threat (sanction) in the form of a criminal act, whichever is violated. Based on the above definition, it can be concluded that criminal acts are prohibited and punished by the perpetrators.<sup>9</sup>

Teguh Prasetyo said that based on the formulation of the criminal act, it contained the following basic requirements:

- a. Human action.
- b. Such acts are prohibited and punishable by law.
- c. Actions taken by someone who can be accounted for.

Within the "KUHP" itself, the second and third volumes of the "KUHP" classify criminal offenses into two categories: illegal and criminal. Sanctions for violations are lighter than crimes. Many terms are used to represent the concept of strafbaarfeit, various terms and meanings used by these experts are generated based on rational reasons and considerations based on the opinion of each expert..

The Criminal Law System distinguishes between crime and illegal acts. A criminal act is an act that violates justice, even though the laws and regulations do not threaten it as a criminal act, a legal act that violates the law or a criminal act is considered a criminal act by the new society because there are laws and regulations that govern it..

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<sup>8</sup>PAF, Lamintang, 2011 Dasar Dasar Hukum Pidana Indonesia.. Bandung: PT. Citra Aditya Bakti, p. 182

<sup>9</sup>Mahrus Ali, 2015, Dasar-Dasar Hukum Pidana , Jakarta: Sinar Grafika, p. 98.

Memorie van Toelichting followed by Moeljatno said that the crime was "illegal", that is, even though it is not regulated by law, it is a criminal act, but is considered to violate the legal system, and the violation is "illegal". This means that it is only after there are regulations like that that you can find out about the illegal behavior.

Although *locus delicti* and *tempus delicti* have no provisions in the Criminal Code, *locus* and *tempus delicti* still need to be known. *Locus delicti* needs to be known to:

- a. Determine whether the Indonesian criminal law still applies to the criminal act or not, this is related to Articles 2-8 of the Criminal Code.
- b. Determining which prosecutors and courts should handle cases is related to relative competence.

### 1. Children

Children are the duty of God Almighty as well as the grace of the Almighty, we must always protect them, because children are attached to their dignity and must be protected. In the life of the nation and state, children are an ideal future for the next generation of the nation, therefore children have the right to live, grow, develop, participate and have the right to be protected from violence, discrimination and freedom..

According to Kartini, children are normal people, are still young, are being identified, and are mentally unstable so they are easily affected by the environment.

Lilik Mulyadi argues that from a legal perspective, Indonesia's positive legal definition of children is usually defined as a person who is under the supervision of a guardian (*minderjarige ondervoordij*).

According to Marlina, children are humans who are under 18 years of age, including children who are still in the womb and are not married. Therefore, children cannot be fully responsible criminally because their ability to think is still limited and is under the supervision of a parent or guardian..

According to Kartini Kartono (Kartini Kartono), juvenile delinquency refers to evil / evil behavior or crimes / crimes of young children, which is caused by a form of social neglect that causes social disease (pathology) in children and adolescents. Symptoms, so they tend to grow as a form of behavior. negligent..

Judging from the understanding of expert opinion, it can be seen that the elements of *Juvenile Delinquency* are:

- a. There is an action or deed;
- b. Acts or actions that are illegal;
- c. People feel or interpret as disgraceful actions;
- d. Performed by children.

In the Juvenile Criminal Justice Law there are new words that have not been included in the Juvenile Court law, namely:

- a. The juvenile criminal justice system is the entire process of solving cases of children in conflict with the law, from the investigation stage to the guidance stage after serving a crime.
- b. Children who are faced with the law are children who are in conflict with the law, children who are victims of crime and children who are witnesses of criminal acts.
- c. The term "unlawful act" in juvenile justice law is no longer used in juvenile criminal justice system law. The terminology has been adapted to the official number. Regarding the protection of children on 23rd 23 of 2002, the term naughty child was changed to illegitimate child, hereinafter referred to as child, is a crime committed by a person who is 12 years old but still under the age of 18.

## 2. *The Process Of Investigatingby Children*

According to the "Juvenile Justice System Law", the definition of a child included in criminal cases committedthe juvenile justice system refers to criminal suspects who are 12 years (twelve) but under 18 (eighteen). year). behavior.

The judicial process is a judicial process, the community must have the opportunity to discuss and be able to fight for certain positions, namely to express the interests of all parties, to consider their interests, and to have certain motives for the decisions they make..<sup>10</sup>

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<sup>10</sup>Shanty Dellyana, 1988, *Wanita Dan Anak Dimata Hukum*,, Yogyakarta: Liberty, hlm. 57.

As a criminal offender, a child will also experience the same legal procedure as an adult who commits a crime. The meaning of the word "same" is almost the same, but the length and processing method are different.

Facing and handling the juvenile offender's judicial process, the first thing that should not be forgotten is seeing that his childhood has all the special characteristics and characteristics, therefore his direction is based on the concept of protecting children in the handling process. So it will be based on the concept of child welfare and child support. Handling children in legal procedures requires special methods, services, treatment, care and protection for children in order to provide legal protection for children who break the law..

In judicial procedures, from investigations, investigations, prosecutions, judicial review to enforcement of court decisions, children are legally protected. In the judicial process, children's rights must be protected by applicable laws, therefore it must be upheld by all parties involved in solving child problems.

The things that must be considered in the process of handling children who are faced with the law are:

a. In the Investigation Process

Talking about child investigation is regulated according to Article 26 paragraph (1) (2), (3) and (4) Law Number 11 of 2012 concerning the Juvenile Criminal Justice System which reads:

- a) Investigations in juvenile cases are carried out by investigators and determined based on the decision of the Chief of the Indonesian National Police or other official appointed by the Chief of the Indonesian National Police.
- b) Examination of a child victim or child of a witness is carried out by an investigator as referred to in the paragraph.
- c) Requirements to be appointed as an investigator include:
  - 1) Having experience as an investigator;
  - 2) Have interest, attention, dedication, and understand children's problems; and
  - 3) Has attended technical training on juvenile justice.

- d) In the event that there is no investigator who does not meet the requirements, the task of investigation is carried out by the investigator who is responsible for investigating adult criminal acts.

b. Arrest

According to Article 30 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System, it is stated: The

- a) arrest of a child is carried out for the purpose of investigation for a maximum of 24 (twenty four) hours.
- b) Children who are arrested must be placed in a special service room for children.
- c) In the event that the special service room for children is not yet in the area concerned, the child is entrusted to the LPKS.
- d) The arrest of children must be carried out humanely with due observance of the needs according to their age.

3. *Definition of Perpetrators of Criminal Actions*

According to the statement of R. Achmad Soema Di Pradja, the perpetrators were people who carried out, ordered the execution, participated in the execution and deliberately persuaded. In the provisions of "Criminal Law", da is divided into two definitions, namely "and" in the broad sense and da in the narrow sense. A father in a broad sense is a father that includes all four groups, and a father in the narrow sense is a father who commits crimes only by himself.<sup>11</sup>

The provisions in the Criminal Code can be called a criminal offender under Article 55, but can also be called a criminal offender under Article 56. According to the provisions of Article 55, the perpetrator commits an act, who does what, who participates in the act, and deliberately recommends other people to committing the criminal act..

4. *Definition of Restorative Justice*

According to Bagir Manan, restorative justice is a concept originating from English-speaking countries such as Canada, Australia, New Zealand, and England. By continuing

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<sup>11</sup>I Made Widnyana, 1992, Sari Kuliah Hukum Pidana II, , Denpasar: Yayasan Yuridika Fakultas Hukum Universitas Udayana, hlm. 33

to prioritize restorative justice, it is hoped that awareness of the language contained in the original language will immediately affect our way of thinking. Restorative justice can be likened to restorative justice. Basically, restorative justice is a punishment concept that aims to find ways to implement a more just and balanced criminal system between the perpetrator, the interests of the victim and the community.<sup>12</sup>

The term “*Restorative justice*” was coined by the psychologist Albert Eglash in his book on compensation in 1977. Restorative justice is concerned with rebuilding relationships after a crime has occurred, not just to improve the relationship between perpetrators and society. Sarre said restorative justice is a hallmark of the modern criminal justice system.<sup>13</sup>

According to Jeff Christian, restorative justice does not only concern criminal behavior from a criminal law perspective, but also relates to moral, social, economic, religious and local customs, as well as various other considerations.<sup>14</sup>

Law No. 3 on Juvenile Court in 1997 officially does not or does not mention the application of restorative justice, but in reality restorative justice is carried out by restoring family justice. Restorative justice is only regulated in Law Number 11 of 2012 concerning the Criminal Justice System for Children (Article 1, paragraph 6, and Article 5, paragraph (1), and paragraph (3) are used in combination).

According to Howard, *Restorative justice* in view that<sup>15</sup>:

- a. Crime is a violation against the people and relations between members of the community.
- b. Violation creates liability.
- c. Justice includes victims, offenders and members of society in an attempt to put things right.

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<sup>12</sup>Bagir Manan. 2008. *Restorative Justice* (suatu pengenalan), Jakarta: Perum Percetakan Negara RI, hlm 3

<sup>13</sup><http://stimur.blogspot.co.id/2015/05/keadilan-restoratif-dalam-sistem.html> diakses pada tanggal 27 Oktober 2020

<sup>14</sup> Hadi Supeno, 2010, *Kriminalisasi Anak* , Jakarta: Gramedia Pustaka, hlm. 196

<sup>15</sup>*Ibid*, hlm. 249-250.

- d. The central focus: victims need to recover from the harm they have suffered (physically, psychologically and materially) and the perpetrator is responsible for restoring it (usually by confessing guilt from the perpetrator, apologizing and remorse from the perpetrator and providing compensation or restitution).

Restorative justice does not only apply to decision making on who wins or loses in the adversarial criminal justice system (adversarial system), the restorative justice process seeks to facilitate dialogue between parties affected by crime, including victims, offenders and supporters of the people, and society, all over. This involves a process in which all parties at risk in a particular crime come together to seek collective decisions on how to resolve the consequences of crimes and their future consequences. According to Ahmad Ali, one of the applications of the principle of restorative justice is to resolve cases of settlement that have been implemented in South Africa, followed by Indonesia and Timor Leste as well as many other countries. In order to better understand restorative justice theory, we will first outline the terms, definitions and concepts of restorative justice. The term restorative justice is also defined by experts in various expressions. As the application of restorative justice develops in many forms and forms, the definition of restorative justice varies. Some of these terms include: community justice; positive justice (positive justice); relational justice; fairness of compensation; and community justice.<sup>16</sup>

Conceptually restorative contains ideas and principles, including the following:<sup>17</sup>

- a. Build joint participation between perpetrators, victims and community groups to resolve incidents or crimes. Regarding perpetrators, victims, and the community as stakeholders, they can work together and directly try to find a fair solution for all parties (win-win solution)
- b. Encourage perpetrators to take responsibility for victims or incidents or crimes that cause harm or loss to victims. In addition, assign responsibility not to repeat crimes committed by them.

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<sup>16</sup>Eva Achjani Zulfa dan Indriyanto Seno Adji, 2011, *Pergeseran Paradigma Pemidanaan*, Bandung: Lubuk Agung, p. 66.

<sup>17</sup>R. wiyono, 2016, *Sistem Peradilan Pidana Anak Di Indonesia*, Jakarta: Sinar Grafika, p. 42

- c. The main purpose of determining an event or criminal behavior is not a violation of the law, but rather a crime committed by a person (group of people) against someone (a group of people). Therefore, the perpetrator must be directed to be accountable to the victim rather than prioritizing legal responsibility.

According to Liebmann basic principles of *restorative justice* as follows:<sup>18</sup>

- a. Prioritize the support and healing of victims of
- b. offenders are responsible for what is done
- c. Dialogue between the victim and the offender to reach an understanding
- d. An effort to put correctly losses
- e. offenders should be aware of how to avoid crime in MSA In front of the
- f. community, help in integrating the two parties, both victims and perpetrators.

In general, the principles contained in restorative justice include the following:<sup>19</sup>

- a. Make the violator responsible for repairing the damage caused by his mistake;
- b. Provide an opportunity for offenders to prove their capacity and quality, as well as to overcome their guilt constructively;
- c. Involving victims, parents, extended family, school and peers;
- d. Creating forums to work together in solving problems;
- e. Establishing a direct and real relationship between mistakes and formal social reactions.

As for the forms of *restorative justice* Existing and currently used are:

- a. *Victim Offender Mediation (VOM)*<sup>20</sup>

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<sup>18</sup> Heru Susetyo dkk, 2013, *Sistem Pembinaan Narapidana Berdasarkan Prinsip Restorative Justice*, Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia RI, Jakarta, p. 10-11

<sup>19</sup> Musakkir, Kajian Sosiologi Hukum Terhadap Penerapan Prinsip Keadilan Restoratif Dalam Penyelesaian Perkara Pidana, *Jurnal Ilmu Hukum Amanna Gappa*, Fakultas Hukum Universitas Hasanuddin, Vol.19, Nomor 3 September 2011, p. 214

<sup>20</sup> Yuniar Ariefianto, 2014, "*Penerapan Restoratif Justice Dalam Penyelesaian Kasus Kecelakaan Lalu Lintas*", Tesis, Malang: Fakultas Hukum Universitas Brawijaya.

Victim-offender mediation or called dialogue / meeting / perpetrator-victim reconciliation is usually held by a meeting between the perpetrator and the victim, presenting a trained mediator. In the area of criminal cases, this model or technique is used both in small cases to reduce the accumulation of cases, as well as serious cases to facilitate forgiveness and a deeper healing process, both for victims and perpetrators. International data show that this technique is successfully applied in Australia, New Zealand, Canada and the Netherlands in a variety of contexts, including the justice system in traffic accident offenses.

b. *Family Group Conferencing (FGC)*

Familygroup conferencing is a wider circle of participants than offender-victim mediation, which is adding people linked to the main parties, such as involving friends, family, and professionals. This technique is a system most appropriate for cases of juvenile delinquency and traffic offenses, such as in Colombia, Australia and New Zealand.

c. *Restorative Conferencing (CR)*

Meetings restorative (*restorative conferencing*) also draws from a wider than victim-offender mediation, in response to a traffic violation. This technique is voluntary (voluntary), consisting of the perpetrator, the victim, the families of the parties and friends, to achieve consequences and restitution (compensation). This model can be used at any stage of the criminal justice process, but is usually used relatively early. For example in some jurisdictions, the police have developed this program as an alternative to arrest and referral to the formal criminal justice system.

d. *Community Restorative Boards (CRB)* The

CRB is a panel or institution of people who have been trained to negotiate problem solving. Here the victim meets the perpetrator and the panelists to discuss the problem and its solution within a certain period of time. If no agreement is reached within that period, the panel will delegate it to the court or police. This is common in England and in Wales.

e. *Restorative Circles*

Is a forum consisting of family and friends to support prisoners in order to socialize with the community. This system is widely used in Hawaii.

#### IV. Conclusion

Conclusions of the discussion are as follows: The

1. implementation of restorative justice through diversion in the Law Area of the Banyumanik Police has not been carried out optimally.
2. In seeking diversion with a restorative justice approach, the Banyumanik police officers still experience obstacles, namely the limited time given to seek diversion, difficulties in presenting related parties, the limited available child investigators.
3. The solutions taken by the Banyumanik Police in overcoming these obstacles include: compiling a work plan and maximizing the performance of each investigator in handling juvenile cases; establish intensive communication with other law enforcement officials; hold socialization about diversion among the community; and make an agreement regarding the supervision of the implementation of the results of the diversion agreement. The advice given by the researchers is to be more effective in enforcing the law on various crimes committed by children so that children do not commit these crimes, the police must always pay attention to the different situations between adults and children when treating children. as a criminal. This must be handled with restorative justice methods, based on the opportunity to give offenders the opportunity to become good people again through informal channels through participation in community resources, and trying to provide judicial assistance to law enforcement officials for children who have committed criminal acts.

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