

Simplified Analysis of Environmental Permits Integrated through OSS (Online Single Submission)

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Abstract

Purpose: This study aims to determine the effectiveness of the Simplification of Environmental Permits which are integrated into business permits through the OSS system.

Research methodology: This study uses qualitative research methods by tending to use analysis that emphasizes the perspective of the subject. The theoretical basis is embedded as a guide so that the research focus can adjust to the facts on the ground.

Results: The Job Creation Law changes the context of environmental permits to environmental approvals. These changes have an impact on the context of environmental feasibility studies, both UKL-UPL and AMDAL. The implementation of the integration of environmental permits into business licenses becomes efficient through OSS.

Limitations: The limitation of this research is a description of the procedure for integrating environmental permits into business permits through OSS.

Contribution: The results of this study are expected to be used as a reference by further researchers in order to develop an analysis of related themes.

Keywords: Business licensing, Environmental permit, Job creation law, Online Single Submission

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1. Introduction

The environment in a theoretical perspective is seen as an absolute part of human life because the environment cannot be separated from human life itself. The environment is considered as a unitary space between all objects, powers, and conditions of living things, including humans and their behavior that affects nature itself. As explained in the legal dictionary, the environment is defined as "factors that affect the quality of life of the community by influencing people's desires and values which include physical, economic, cultural, aesthetic and social conditions". Law enforcement can be used as a rule to overcome environmental problems by referring to the regulations in the Environmental Management and Protection Act Number 32 of 2009. However, with the birth of the Job Creation Law, now environmental issues have shifted and are guided by the Job Creation Act.

To achieve a golden Indonesia, and make Indonesia the fifth largest economic power in the world, the government is developing economic growth by attracting investment to Indonesia. The creation of a job creation law by the government aims to attract as much investment as possible. Given the low level of investment in Indonesia, President Joko Widodo decided to cut down on investment inhibiting regulations through the omnibus law by issuing the Job Creation Act. This is one of the government's efforts to cut regulations that hinder investment in Indonesia, with the aim of reducing investment barrier procedures as quickly as possible. The birth of the Job Creation Law abolishes, changes, and combines several applicable laws into one law through the concept of the Omnibus Law or commonly referred to as the Universal Sweeping Law. The concept of Omnibus Law is a new concept used in the Indonesian legal system. This system is commonly referred to as universal sweep law because it is able to replace several legal norms in one regulation. (Prabowo, 2020) The number of laws that have

been considered to hamper the ease of doing business due to overlapping, so the concept of the Omnibus Law is the right step to issue a law that can improve this as stated by the Minister of Agrarian Affairs and Spatial Planning (Sofyan Djalil). With the issuance of a law to improve several existing laws, it is hoped that it can be a solution to problems in the economic field because with the increasing number of laws there is no guarantee that the process can be accelerated because there are still many laws that regulate and can contradict each other ([Wahyudin](#)).

The birth of the Job Creation Law brought changes to a number of provisions contained in UU-PPLH No. 32 of 2009 concerning Environmental Protection and Management. This is one of the government's efforts to simplify the licensing process, with the aim of shortening the bureaucracy in the licensing application process. Broadly speaking, the Job Creation Law stipulates new rules related to business licensing by removing and changing the provisions as stipulated in the Environmental Protection and Management Law Number 32 of 2009. ([Setiawan, 2020](#)) In practice, the Change has been interesting a lot of controversy and criticism from a number of environmental plagiarists and the public. They argue that this change weakens the existence of the Amdal where the environmental impact analysis is only for high-risk projects, while the government in placing regulations on projects that are either high or low risk is not clear. Moreover, another problem with the Job Creation Law is that the licensing process does not involve the role or participation of the community with the understanding that this section is limited to those directly affected. As a result, the community assumes that in the future they will no longer be able to file objections to the Amdal document.

In fact, the amendments to the Job Creation Law are only related to providing facilities for obtaining environmental permits with the aim that environmental permits that are integrated with Business Permits can simplify the licensing system and strengthen the enforcement of laws and regulations through an electronically integrated Business Licensing Service system or commonly known as online single submission (OSS). In conclusion, the basic principles and concepts in the Job Creation Law have not changed, remain in accordance with the previous provisions with the government's hope that the Job Creation Law can be a tool for economic transformation to avoid the middle-income trap in order to achieve Indonesia Gold before 2045. and make Indonesia the fifth largest economic power in the world. ([Hartanto, 2020](#))

Based on the analysis, in the process of forming the Job Creation Law, the lack of participation from the community, has become one of the sectors that have drawn criticism and problems. In terms of substance, some experts argue that the Job Creation Law is considered environmentally unfriendly and threatens marginalized communities because various leniency in environmental requirements for business actors in the Job Creation Law has the potential to cause side effects. However, from the government's point of view, the basic principles and concepts of environmental regulation in the Job Creation Law have not changed from the previous provisions. Changes are more directed at improving policies and implementing rules that are in line with the objectives of the Job Creation Law itself which provide convenience for business actors in obtaining environmental approvals while still meeting the stipulated provisions ([Suryani, 2020](#)).

2. Literature review

In a study, it is necessary to support the results of previous studies that are continuous with the research as a reference.

The Omnibus Law is the idea of the President of the Republic of Indonesia Joko Widodo to overcome the problem of the complexity of the licensing process and overlapping regulations that cause investment delays. The Omnibus Law is made in the form of a law whose formation is designed based on the provisions of the laws and regulations for its manufacture. ([Prabowo, 2020](#)) The reason President Joko Widodo finally launched the Omnibus Law concept was related to regulatory and licensing constraints in investing. ([Wahyudin](#)) This was reiterated by Airlangga Hartarto, that in order to encourage the development of business activities to maintain existing job opportunities and to open new job opportunities, the Draft Job Creation Law was made with the aim of providing optimal and maximum benefits to the community. while taking into account the balance and interests of the

community. The Job Creation Law can provide convenience and certainty in the licensing process for business actors, both in registering Intellectual Property Rights (HAKI) and in establishing Public Companies (PT) by registering through the OSS system. OSS is the government's effort to update various policies to accelerate business implementation, one of which is the application of an electronically integrated business licensing system through online single submission (OSS), which aims to enable business actors, including micro, small and medium enterprises, to do business more quickly and easily ([BKPM, 2017](#)). The implementation of OSS is regulated in Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services. With the OSS system, business actors will get a business license in less than an hour ([Dararizki, 2021](#)).

In addition, the requirements are cheap and easy to bring legal certainty for business actors. ([Hartanto, 2020](#)) However, since the discussion of the Draft Law on Job Creation, controversial articles have emerged, one of which concerns environmental issues. Broadly speaking, it can be understood that the employment creation law abolishes, changes, and stipulates new rules regarding business licensing as regulated in Law Number 32 of 2009 concerning Environmental Protection and Management, and its authority is transferred from the regional government to the central government. ([Setiawan, 2020](#)).

Many people are worried about the existence of the Job Creation Law which integrates environmental permits into business permits, triggering the perception that AMDAL is abolished. However, the National Jendela reference confirms that AMDAL is not abolished and still exists, it's just that the process is made simpler, so that the time and costs required will be more efficient. ([Nasional, 2020](#)) According to [Eddyono's research \(2020\)](#) the simplification of investment requirements is one of the government's efforts to improve the investment ecosystem and business activities created by the Job Creation Act. ([Eddyono, 2020](#)) As well as emphasized in the results of [Anih Sri Suryani's research \(2020\)](#) that the integration of simplification of environmental permits in the Job Creation Act is expected to facilitate investment and job creation. In addition, there is a need for socialization from the government regarding the integration of environmental permits into business permits through the Job Creation Law so that misinformation and interpretation do not occur that triggers public concern for environmental sustainability. ([Suryani, 2020](#)) This was also emphasized by the Public Relations of the Ministry of Environment and Forestry that the law on job creation, especially in the environmental and forestry sectors, favors the community and prioritizes restorative justice. The integration of environmental permits into business licenses is a solution in simplifying licensing regulations which are considered relatively complicated. The simplification aims to accelerate benefits without reducing the firmness in implementing balanced and sustainable economic, environmental and social development. ([Indonesia K. L., 2020](#)).

The government in a press release of the Republic of Indonesia ensures that AMDAL is not abolished in the Job Creation Law or the Omnibus Law in the environmental sector. Environmental approval is only a basic requirement in Business Licensing. The fact is that the AMDAL process is only made simple so that the rules are not complicated. ([RI, 2020](#)) In conclusion, for business actors or activities that already have a business license, basically, they are required to have documents containing environmental management and monitoring. ([Training, 2020](#))

This has prompted the author to research further on the integration of environmental permits into business permits based on the Job Creation Law.

3. Research methods

This study uses qualitative research methods by emphasizing the perspective of the subject on the process and its meaning by tending to use analysis techniques and document studies. This research was conducted in June-August 2021 in Sukabumi based on the Job Creation Act, Environmental Permit, Business Permit, and OSS system. This study aims to provide further understanding regarding the integration of environmental permits into business permits based on the Job Creation Law Number 11 of 2020.

4. Result and discussion

Referring to the discussion behind the problems that arise, the conclusions of the research results are formulated as follows.

How is the Environmental Permit process after it is integrated with the Business Permit?

Job Creation Law No. 11 of 2020 was officially ratified by President Joko Widodo on November 2, 2020. The law abolishes and/or changes and combines several applicable laws into one law by carrying out a new concept, namely the concept of the Omnibus Law which is used in the statutory system in Indonesia. It is known that the enactment of the Job Creation Act changed a number of provisions in the Environmental Protection and Management Act (UU-PPLH) no. 32 Year 2009, one of which is regarding changes to environmental provisions.

Environmental issues are one of the targets in the Sustainable Development Goals. [\(Mickael B. Hoelman et al, 2015\)](#) which is considered very urgent in both developed and developing countries in the core to achieve quality economic growth while still paying attention to environmental aspects. One of the government's efforts to overcome this is to provide regulatory policies related to business licenses, business investment requirements, labor, and other policies that become the basis for encouraging the government to make breakthroughs in overcoming these conditions. Government policy is a policy created or made by government institutions and officials. According to Carl Joachim Friedrich, a policy is " a series of actions proposed by individuals, groups or the government in a particular community environment by explaining the obstacles and opportunities in the implementation of the proposed policy in order to achieve certain goals. Associated with the environment, the policy is oriented towards the goal of environmental management and protection as evidenced in the simplification process of environmental permits after being integrated with business permits based on Job Creation Law Number 11 of 2020.

In Law Number 32 Year of 2009, Environmental Permit serves as a requirement to obtain a Business Permit. As Article 1 point 35 UUPPLH reads that "Environmental Permit is a permit granted by the government to individuals or business entities that carry out businesses and/or activities that are required by AMDAL or UKL-UPL in order to fulfill the prerequisites for obtaining business and/or activity permits as well as obligations to protect and manage the environment." Meanwhile, in the Job Creation Act, The Environmental Permit is changed to Environmental Approval as stated in Article 1 number (35) of the Job Creation Law that "Environmental Approval is a Decision on Environmental Feasibility or a statement of Environmental Management Ability that has obtained approval from the Central Government or Local Government."

In context, "Permit" as a product of administrative law is certainly different from "approval" which is more of discretion over an authority. Thus, the replacement of the context of "permit" with "approval" certainly has significant legal consequences. The integration of environmental approvals into business licensing is a solution to simplify licensing regulations. This simplification is carried out so that the benefits are faster without reducing the firmness in carrying out balanced and sustainable economic, environmental and social development. [\(Indonesia K. L., 2020\)](#)

In article 6 letter b of Job Creation Law Number 11 of 2020, that environmental approval is a simplification of the basic requirements for business licensing, it means that every person or legal entity that conducts business activities will be granted a business license after the business actor obtains environmental approval as regulated in the provisions of laws and regulations in the field of environmental protection and management. As for the process of implementing business licensing, the government provides Online Single Submission as an Electronically Integrated Business Licensing Service (OSS). With OSS, business actors can register and manage independently the issuance of business licenses and commercial or operational permits through an electronically integrated online system (OSS).

The Job Creation Law stipulates that the basic principles and concepts of environmental permits do not change, they remain with the actual functions and processes, namely technical and scientific documents of environmental feasibility studies which are then used as requirements for business permits containing obligations or provisions from environmental aspects. ([Nasional, 2020](#)) The stages of the environmental permit process are summarized into 3 parts, namely:

1. Environmental document process

Environmental Documents are documents that contain environmental management and monitoring. In this case, the business actor submits one of the environmental documents based on the type of business activity he is involved in. The types of environmental documents in question consist of :

- Environmental Impact assessment (Amdal),
- Environmental Management and Monitoring Program (UKL-UPL),
- Statement of Environmental Management and Monitoring Undertaking (SPPL),
- Environmental Management and Monitoring Documents (DPPL),
- Environmental Impact Evaluation Study (SEMDAL),
- Evaluation of Environmental Studies (SEL),
- Presentation of Environmental Information (PIL),
- Evaluation of Environmental Presentation (PEL),
- Environmental Management Documents (DPL),
- Environmental Management Plan and Environmental Monitoring Plan (RKL-RPL),
- Environmental Evaluation Documents (DELH),
- Environmental Management Documents (DPLH), and
- Environmental Audits. ([Training, 2020](#))

2. Environmental approval

Environmental Approval is a Statement of Environmental Management Ability or Environmental Feasibility Decision that has received approval from the Central Government or Regional Government. Because the environmental permit has been integrated with the business license, the business actor who has prepared the environmental document referred to in point 1 then submits an environmental document assessment as a condition for fulfilling business commitments. That is, if the conditions are met, the business actor will get environmental approval recommended by the Minister, Governor or Mayor who is authorized in his area.

3. Business Licensing

Based on Article 1 of PP No. 6 of 2021 concerning the Implementation of Business Licensing in the Regions, that “Business Licensing is the legality granted to business actors to start and run their businesses and/or activities”. ([Indonesia R. , Peraturan Pemerintah No. 6 tahun 2021 tentang Penyelenggaraan Perizinan Berusaha di Daerah., 2021](#)) Issuance of documents related to business licensing must be carried out through OSS in the form of electronic documents in accordance with the ITE Law, accompanied by an electronic signature. Business Actor registers by filling in complete data and getting NIB (Business Identification Number). Then to get a business license, the business actor submits a business commitment, one of which is an environmental permit commitment. With the fulfillment of the environmental permit commitments and other commitments, business actors will get a business license that has been in effect:

Based on the old provisions, the environmental permit was separated from the Business Licensing, so if there is a violation and sanctions are imposed on the revocation of the permit, only the environmental permit is revoked, and the business permit continues. However, in the Job Creation Law, environmental permits have been integrated electronically with business licenses, so if there is a violation, a license revocation can be imposed which are revoked as well as Business Permit. ([RI, 2020](#)) Basically, the Job Creation Law stipulates that the basic principles and concepts of environmental licensing do not change, they remain in accordance

with the previous provisions. Changes are only related to providing convenience in obtaining environmental approvals with the intention that the purpose of the environmental permit being integrated into business licensing is to try to streamline the licensing system and strengthen the enforcement of laws and regulations. Therefore, the government ensures that there is no abolition of environmental permits in the Omnibus Law or Job Creation Law in the environmental sector, only that the implementation process undergoes several innovative changes with the aim of making it easier for business actors to obtain business permits. In other words, environmental approval is the basis for the issuance of Business Licensing as determined by the State Administration. ([RI, 2020](#)).

What are the obstacles in the Environmental Permit process after it is integrated with the Business Permit?

With the abolition of environmental permits, of course, this will have an impact on changes in the context of environmental feasibility studies, especially on AMDAL and UKL-UPL as described in Article 22 of the Job Creation Law, especially changes in Articles 24-35 of the PPLH Law. Basically, a permit is one of the concrete instruments of environmental management, because the permit is the approval of the authorities or those who are authorized to it in accordance with the provisions of the legislation or government regulations, to deviate from certain statutory prohibitions in certain circumstances. According to I Made Arya Utama, a permit is a unilateral government administrative-legal act that enforces concrete regulations based on the procedures and requirements stipulated in the applicable laws and regulations. Licensing is a government legal act based on the general authority that approves or allows according to law for a person or legal entity to carry out a certain activity because licensing is a form of a government decision in state administrative law. Therefore, a licensing instrument is needed by the government to concrete its authority in government. This action is carried out through the issuance of a State administrative decision.

Talking about the transition of the environmental permit process after being integrated with the Business Permit, since Job Creation Law no. 11 of 2020 was published, it was concluded that there were 4 (four) critical issues in the Job Creation Law related to the environment which became obstacles, namely 'precautionary principle'.

This law ignores the precautionary principle which is used as the main guideline in the use of Natural Resources and environmental protection by changing the concept of Environmental Permit that previously existed in the PPLH Law into an environmental 'approval'. Despite being a prerequisite for business licensing, the position of environmental approval is not explicitly formulated. With the abolition of the "environmental permit", the administrative lawsuit mechanism was abolished. However, there is a strengthening of the concept that environmental compliance can be the reason for the cancellation of business licenses. The provision of transparent access to information for the public, as well as the strengthening of environmental control institutions at the central and regional levels, are urgently needed. ([Eddyono, 2020](#))

1. The concept of risk-based licensing.

The concept was set forth in the Job Creation Act without any details or detailed explanation. Meanwhile, the absence of an adequate and integrated database on various economic sectors, apart from institutional issues and corruption issues, will be the biggest challenge in its implementation. Regarding environmental issues, an inventory of natural resources along with plans for their utilization and reserve is very necessary. This is significant for a comprehensive and integrated risk mapping in the determination of policies, plans, and programs of interrelated sectors ([Eddyono, 2020](#)).

2. Changes in the definition of absolute liability (strict liability).

That is a change for corporations that changes the orientation of this principle so that the difference between liability based on fault and the potential to weaken public access to justice is minimal ([Eddyono, 2020](#)).

3. Community participation.

Significant reduction of community access to participate in the decision-making process of planned activities that will have an impact on the environment. For example, in the preparation of the AMDAL, where the scope of the community by the Job Creation Law is distorted to the extent of "people who are directly affected". Elements of the wider community that also have an interest in environmental sustainability such as universities and NGOs are eliminated ([Eddyono, 2020](#)).

Regarding the obstacles that arise in the transition process, the significant implication that has highlighted is that the community loses their right to refuse the AMDAL document, in the Job Creation Law clarified to "communities directly affected by the relevant". This means that the people who have the right to file objections are only addressed to the people who are directly affected. In addition, the loss of environmental observers and community members who are affected by all forms of decisions regarding the AMDAL process, this is contrary to the constitution because it does not support the principles of transparency and accountability regarding the process of determining environmental feasibility by not involving the community. As mandated by the 1945 Constitution contained in Article 28 letter 1 that the right to a good and healthy environment is fully guaranteed by the Indonesian constitution. The right to a good and healthy environment is supported by three pillars, namely: access to information, public participation, and access to justice.

Regarding the internal harmonization of fields, in the amendment of Law no. 32 of 2009 according to the Job Creation Law, there are 5 (five) major obstacles that need to be adjusted, namely: Environmental Approval and Environmental Feasibility Study (AMDAL, UKL-UPL, SPPL), Environmental Quality Standards, Hazardous Waste Management, Environmental Guarantee Fund, and Administrative Sanctions. It is concluded that in substance, each implementing regulation will contain fat provisions, especially if all of these issues are summarized in one Government Regulation. So the implication is that the Central Government's homework will be very much, not to mention cross-sector harmonization and harmonization with the Government Regulation on Risk-Based Licensing as a direct mandate of the Job Creation. ([Eddyono, 2020](#))

Although in principle AMDAL and UKL-UPL are prerequisites for making decisions for the implementation of businesses or activities contained in business permits or government approval, of course, they are quite appropriate and deserve appreciation. Because through the government's policy, the simplification of the licensing system is trying to be realized. However, of course, the intended simplification does not mean that it has implications for the simplification of environmental impacts because environmental feasibility studies will still be required to be fulfilled in order to manage and monitor environmental impacts arising from the implementation of businesses or activities. However, the consideration is that if the principles of the Job Creation Law are not prepared properly, thoroughly, and integratedly, then the regulation concerning the assessment of the hazard level, the assessment of the potential for hazards, the level of risk and the rating of the business scale to determine the business activity to be a business activity that is 1) low risk; 2) medium risk; and 3) high risk (Article 7 Paragraph 7 of the Job Creation Law) then the licensing system will falter in the application of risk-based business licensing.

How effective is the role of OSS in integrating environmental permits into business permits?

OSS or commonly referred to as online single submission is an integrated online permit issued by the OSS Institution for and on behalf of the Minister, head of the institution, Governor, or Regent through an integrated electronic system. OSS is one of the government's efforts to simplify business licensing and create an integrated licensing service model that is fast and cheap and sure. The implementation of OSS is regulated in Government Regulation Number 24 of 2018 concerning Electronically Integrated Business Licensing Services. With the OSS system, business permits will be obtained by business actors in an efficient time with an easy process. OSS is designed as one of the government's efforts to improve the stability of the investment climate in Indonesia, therefore business actors are given the convenience of investing through the existence of OSS.

In general, the environmental licensing process with OSS has one major difference, namely environmental licensing with OSS is preceded by a permit with a commitment. Issuing permission with commitment requires the fulfillment of commitments, which in the case of environmental permits are the preparation of environmental management and monitoring efforts (UKL UPL) or environmental impact analysis (AMDAL), both of which include UKL-UPL recommendations or environmental feasibility decisions. ([Margaretha Quina, 2019](#)) Following up on environmental permits, OSS will issue environmental permit commitments with a timeframe for completion of commitments that must be fulfilled by business actors. If the commitment has been fulfilled, the environmental permit will be effective until there is a change in the future.

The process of applying for a business license in OSS is more efficient than the process before the OSS. Currently, a series of business licenses are within the scope of OSS, while each commitment in it has its own period of completion. For example, a commitment to an environmental permit is granted within 30 days from the time the environmental permit with the commitment is issued. Therefore, the role of local governments that will give approval to environmental documents, both UKL-UPL, AMDAL, must not exceed the predetermined time period, because if the process is problematic, the central government will follow up on the problems that occur. Therefore, the process of fulfilling the licensing process is said to be more efficient because the process and the bureaucracy are cut down to be shorter

5. Conclusion

The birth of the Job Creation Law changed a number of provisions in Law no. 32 of 2009. Significant changes occurred in the context of environmental permits which were changed to environmental approvals. The Job Creation Law creates environmental approvals as a simplification of the basic requirements for business licensing. As for the process of implementing business licensing, the government provides an electronically integrated business licensing service system known as OSS (Online Single Submission). Basically, in the Job Creation Law, the basic concept of an environmental permit does not change, it still acts as a business license requirement that contains provisions from environmental aspects. The stages of the process of integrating environmental permits with business permits are summarized in three stages, namely the process of environmental documents, environmental approvals, and business permits. Basically, the principles and concepts of the Job Creation Law stipulate that the basis for environmental licensing remains the same, the changes are only related to efficiency by making it easier for environmental permit applicants with the intention that environmental permits are integrated into permits that seek to simplify the licensing system and strengthen law enforcement.

The abolition of environmental permits in the Job Creation Law has an impact on changing the context of environmental feasibility studies, especially on AMDAL and UKL-UPL. It is concluded that there are 4 (four) critical issues in the Job Creation Law related to the environment that become obstacles, namely, (1) the precautionary principle by changing the concept of Environmental Permit into environmental approval; (2) the concept of risk-based licensing is felt to have no detail or detailed explanation of the concepts contained in the Job Creation Law; (3) changes in the definition of strict liability change the orientation of principles and have the potential to weaken people's access to justice; (4) community participation is limited to those directly affected. Apart from not involving the community in the process, it also does not support the principles of transparency and accountability which are considered contrary to the constitution and the mandate of the 1945 Constitution as stated in Article 28 letter 1 that the right to a good and healthy environment is fully guaranteed by the Indonesian constitution.

The integration of environmental permits into business permits is carried out through OSS. Business actors will easily complete the business licensing process through one OSS portal. The environmental permit is one of a series of business licenses issued through OSS as a business commitment. Business commitments must be fulfilled by business actors within a predetermined period of time. Local governments play a role in approving environmental documents submitted by business actors. If the

environmental document is approved, the environmental permit commitment will be effective. Therefore, the licensing process becomes easier, cheaper and more efficient because the bureaucracy is cut down to be shorter through OSS

Limitations and further studies

This research is limited to the description of the procedure for applying for environmental permits in the OSS system and has not described the requirements and conditions of the licensing application process. For further research, variations in data collection can be obtained from the results of interviews so that the research results can be richer.

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