

The Spread of Hoaxes and Its Legal Consequences

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Abstract--*The presence of the internet may produce and distribute information easily and quickly. However, the existence of the internet not only has a positive impact, but the internet has become a medium for committing crimes in the virtual world. A person can easily create and spread hoaxes by creating websites, sites, blogs, accounts and applications with the aim of creating panic, noise, confusion or causing distrust for someone, group or government. To charge the perpetrators of spreading hoax in virtual space, the government has issued several laws, but the laws that are most often used to charge the perpetrators of spreading hoax are Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions and Law No. 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination. This law is expected to be able to restrain and give a deterrent effect to those who spread hoaxes to defame someone's honor and reputation by using tribal, ethnic, racial and religious sentiments.*

Keywords--*Distribute Information, Spread, Hoaxes, Legal Consequences.*

I. INTRODUCTION

Communication and information technology through the internet has made the exchange of information faster and faster. The internet and its supporting technology devices seem to have made the world infinite (Finklea, 2012). The advancement of science and information technology has caused changes in the political, economic, social and cultural fields (United National Office on Drugs and Crime, 2013). Even the territorial boundaries of a country have changed, not only covering land, sea and air, but also including online, virtual, or cyberspace (Heidegger, 1977). The rapid growth of internet network users has raised concerns in various countries in the world so that a number of countries have begun to restrict the internet access for their citizens (Bernardino, 2017).

The use of the internet is a virtual dimension that is difficult to be restricted because the internet is easy to use and access from anywhere in the world (Karina & Mendoza, 2017). Despite this widespread use of the internet on the one hand has brought positive changes in the fields of life, politics, social, economy and so on, on the other hand it has caused a paradigm shift in the study of crime (Widayati, 2018). As a result, anyone can commit crimes both by internet users and other people who have never been in direct contact with the related person (cybercrimes) (Nwizege, Chukwunonso, Kpabeb, & Mmeh, 2011). Through virtual media (cyberspace), someone can very easily make pictures, status, memes and videos that contain elements of hatred, attack the honor of others, radicalism and terrorism. Even someone can become a propaganda expert just by creating a blog, account, site by using a fake identity (Tongia, Subrahmanian, & Arunachalam, 2005).

One of the crimes that are rampant in Indonesia is the circulation of hoaxes in various media, both social media and news media. Hoax is always in circulation during the period of political contestation. Hoax has become a

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powerful weapon for parties involved in political battles to win the sympathy of the people, drop and damage the reputation of their rivals in a political event. Indriyanto Seno Adji said that hoax is a new phenomena that always appear in the ongoing political year with the aim at causing panic and noise by targeting certain parties so that people do not believe in people or groups who are the subject and object of the hoax (Widayati, 2018).

The Republic of Indonesia police institution has detected hundreds of provocative contents and false news using tribal, ethnic, class, racial and religious sentiments. In March 2018, there were 642 provocative contents containing false news and hate speech (Widayati, 2018). Based on a survey conducted by VIVA Media Group, President Director of Viva Media Group, AnindyaNovyan Bakrie said that out of 1,116 respondents, 92,40% of social media were mostly used to spread hoaxes, 62,80% through chatting applications, and 34,90% through various sites or websites. Meanwhile, the spread of hoaxes through TV only reached 8,70%, 5% on print media, 3,10% on e-mail, and 1,20% on radio (Kurniawan, 2018). The Ministry of Communication and Information stated that there are 800,000 sites in Indonesia that have been indicated as fake information spreader (Yuliani, 2017). The Director of Information and Communication of the State Intelligence Agency (BIN), WawanPurwanto said that 60 percent of information or news circulating through social media is dominated by news or false information that can influence the public (Movanita, 2018).

From the data above, it was found that the spread of hoaxes was not only carried out by people from the lower middle class but the spread of hoaxes was actually carried out by educated people, someone who is known publicly to have a high social status, even in some cases handled by law enforcers, the spread of hoaxes is actually carried out by a certain religious leader or figure. At this time, all levels of society can easily have computer technology and mobile phones (smartphones) to access the internet and use various applications contained in them. Countries that uphold democracy and human rights provide broad access to the public to think, argue, create and innovate through the virtual world. However, freedom is not absolute and is restricted by privacy, honor and other human rights. If there are status, images, videos and news that ruin and defame a certain person or institution, the perpetrator can be dealt with various applicable laws and regulations. Therefore, this article will discuss the spread of hoaxes and its legal consequences for the perpetrators of spreading hoax in Indonesia.

Related Works

Rapidly evolving computer technologies have become an integral part of modern life. While it simplifies social life, the changes brought by technology also bring some security issues [6]. Cyber criminals seem to keep their business without any hindrance. Home computer users are particularly vulnerable to attack by a sophisticated and globally scattered hacker group. In the era of smart phones, the situation worsened, hackers offered even more attacks of abuse [7]. Research efforts in the field of computer warfare are extensive and involve a number of issues such as legality, computer weapons and deterrence. Despite all of the cyber war research activity, a great deal has overlooked one aspect: restoring peace and security after its end [8]. Computer end-user hygiene often plays a major role in disrupting computer security. Therefore, we need a deeper understanding of the differences between users that are related to good or bad hygiene and an updated view of what users do to promote proper hygiene [9].

II. RESEARCH METHODS

This study used qualitative methods and doctrinal approach. Parise said that doctrinal research or normative research is a systematic explanation and presentation regarding the laws and regulations, the relationship between legal rules and principles, constraints in laws implementing and predicting legal developments in the future (Hutchinson, 2012). AnwarulYaqin also said that doctrinal approach is to find, explain, analyze and systematically present certain principles, concepts, theories, laws and discover new ideas, new knowledges related to the development of legal science (Yaqin, 2007)

III. RESULT AND DISCUSSION

Media of Hoax Spreader

Hoax or in Indonesian is called hoaks meaning false news, false information, obscure the truth, a fact that has been modified or a message that is not in accordance with the facts [14]. Hoax is a false news that cannot be accounted for by anyone even by the makers themselves, and anyone can be deceived by the news. The term hoax became popular along with the development of online information and communication technology, especially mass media and social media[15]. Pellegrini said that hoax is a lie that is written in such a way by a person or group of people to cover or divert attention from the truth, which is used for personal gain, both intrinsically and extrinsically (Pellegrini, 2008).

Generally, the spread of hoaxes in virtual space is done through various media such as websites, blogs, social media applications and news sites. However, the most widely used media in spreading hoax are mass media and social media. With the rapid development of information and electronic technology, mass media which used to be more in print or referred to as print media, has now been transformed from print media to electronic media whose contents or news can be enjoyed by the public through computer or telephone devices (smartphone) that is connected to the internet network.

In the internet network, there are many news sites that present provocative news containing sentiments of ethnicity, religion, race and groups (SARA). There are several sites that have been blocked by the government because the contents they presented contains lies, provocative, utterances of hatred and hostility such as the website saracennews.com. The Ministry of Communication and Information has also blocked as many as 6,000 sites that spread hate speech and hoaxes since January 2017. The blocking was carried out after many reports from people who felt aggrieved from the media coverage (Juditha, 2018).

The emergence and development of internet technology has brought new ways of communication in the community quickly, cheaply and very broadly. Communication can occur anywhere, anytime, without having to meet and meet face to face. Even this technology makes everyone the same without seeing social, economic, hereditary, skin color and religious status. This technological development was followed by the emergence of many social media features and applications such as "mushrooms in the rainy season", for example, Facebook, Google+, Twitter, Whatsapp, Line, Instagram, Path, BBM and so on. These applications can be used as a medium to exchange

information both to known and unknown people. With the technology that is so cheap and easy that provides social media applications, anyone can have it and use it.

Social media or social networks are internet-based media that can interact and present themselves, both instantly and delayed, with a wide audience or not that encourages someone to interact with others (Whittaker, Kowalski, Whittaker, & Kowalski, 2015). Valenzuela Sebastian said that social media consists of facilities and infrastructure information used to create and spread various types of information, media content can be available in the form of personal messages, news and ideas in digital form and consumed by the public (Valenzuela, 2013). Shabnoor Siddiqui also stated that social media is a medium used by consumers in sharing informative texts, images, sounds and videos and is intended for the general public (Siddiqui, 2016). Social media is used productively by all levels of society with a variety of needs such as business, politics, media, advertising, the police, emergency services and has also been the key to provoking thoughts, dialogue and actions around social issues (Hayes, 2015; Kent, 2016).

In essence, any type and social media application functions to provide information, education, discussing media and facilities to express opinions (Kaplan & Haenlein, 2010; Rahadi, 2012). But in fact, it is not used according to its function but is often misused by spreading various issues that can cause hatred for each other and can endanger national security stability (Juliswara, 2017). Social media is very effective for spreading hoaxes that aims to make public opinion, lead public opinion and form perceptions tempting the intelligence and accuracy of internet and social media users. The purpose of spreading hoaxes is varied but generally hoaxes are spread just as fad or jokes material, dropping competitors (black campaign), insulting, defaming someone's reputation, damaging the reputation of someone or company, promoting fraud, or inviting to do good deeds that actually have no clear argument. But people are very easily influenced and spread to others so that the hoaxes spread quickly.

In 2017, the Indonesian Telematics Society conducted a survey of hoaxes outbreaks in Indonesia. According to the survey results, the most widely used channels in distributing hoaxes are social media (Facebook, Twitter, Instagram, Path) of 92.40%, followed by chat applications (Whatsapp, Line, Telegram) of 62.80% and through website as much as 34.90%. The most widely types of hoax distributed and consumed by public are social political issues as much as 91.80%, SARA issues as much as 88.60% and health problems as much as 41.30% (Juditha, 2018; Mastel, 2017).

Contents that are often used as material to make hoaxes are political, economic, legal and cultural issues. However, all hoaxes are often associated with tribal sentiments, religion, skin color, ethnicity, provocative racial tone, divide and conquer, and "disgust" about something different. Based on a survey conducted by the Indonesian Telematics Society (Mastel) in 2017 above, the issues that dominate hoaxes are political issues and news containing elements of SARA. Hoax is used as a weapon to attack and kill the character of political opponents so that people (voters) doubt or do not trust the reputation or credibility of someone who is a political opponent.

Hoax and Its Legal Consequences

The negative impact that often occurs in communicating and exchanging information easily through social networking sites among its users is spreading news that has a content of insult or defamation. At first, the owner of

the account only wants to write what they think on status of the social network they own. However, someone often forgets that the words or sentences they write can be read by everyone.

Hoaxes have been spreading massively in the community, even hoaxes have attacked the institutions of the Indonesian National Army (TNI), the Republic of Indonesian Police (Polri), the President, Religious Leaders, Politicians, traditional leaders and so on. For example, it is spread in the online media that the wife of the TNI Commander, Marshal TNI HadiTjahjanto is of Chinese descent. This news was posted by owner of Facebook account GustiSikumbang whose real name is Siti SundariDaranila with narratives containing elements of SARA (Kuwado, 2017). The National Police Institution has also been hit by hoax attacks. An account on Instagram, Muslim_Cyber1 uploaded a screenshot of fake conversations between National Police Chief Gen. Tito Karnavian and the Head of Public Relations of Metro Jaya Police Kombes Argo Yuwono to fabricate the case of the leader of the Islamic Defenders Front (FPI) HabiebRizieq Shihab using the SARA issue (Fatonah, 2017).

Zara Zettira, a social media user via her Twitter account @ZaraZettiraZR once posted rumor of "10 million Chinese citizens who will migrate to Indonesia". This account reposted the statement of Deputy Prime Minister Liu Yandong about their investment in Indonesia. This news was twisted as if "importing immigrants from China to Indonesia." Then the post was copied by the VOAIslam site with the title "5 Years of Jokowi Leadership, 30 Million Chinese Entering Indonesia!" and posted again by the Portal news site named Islam.ga with the narration, "The number of Chinese ethnic is 15-20 million, and it certainly will grow rapidly in 2020". Then the news was posted again by a website named Intelijen.co with the title "Jokowi Will Import 10 Million Chinese, Want to Breed in Indonesia and Transmit Their Ideologies" (Juliswara, 2017).

This news needs to be clarified by the government because there are racial sentiments that can threaten the spirit of diversity, unity and peace in a pluralistic Indonesia. The number mentioned in this post is not a small amount, 10-20 residents can occupy two provinces in Indonesia. The issue of China or 'antekaseng' is troubling, not only because of the huge number of people reaching 10-20 million, but ethnic and communist differences brought by Chinese citizens are very contrary to the ideology of Pancasila which acknowledges the existence of the divinity concept.

In the legal aspect, the hoax that had stirred up the world of law enforcement is an accusation against the Constitutional Court (MK) which is considered legalizing sexual deviance behavior such as lesbian, gay, bisexual and transgender (LGBT). Netizan accused and spread false news that the Constitutional Court has legalized LGBT in Indonesia. One account that posted and spread this hoax is @rizurin on twitter. In the timeline of his account, @rizurin wrote that "lgbt is no longer a crime in indonesia!! it's a big step for us!" The news of LGBT legalization then became viral and circulated massively on various social media and mass media. Netizens not only attack institutions but also attack the honor of constitutional court judges as guardians of constitutional in Indonesia. As a result of the hoax, the authority of the institution and judges of the constitutional court were tainted.

Spokesman of Constitutional Court, FajarLaksono confirmed that in Decision No. 46/PUU-XIV/2016, there is no single word in holding and judges consideration who mentioned legalizing sexual deviance behavior such as LGBT (Erdianto, 2017b). Instead, the Constitutional Court Decision approved the prohibition and punishment of

LGBT perpetrators, but the authority to make these laws is not the authority of the Constitutional Court. The former Chairperson of the Constitutional Court, Mahfud MD said that the news circulating in the mass media and social media was very wrong and not in accordance with the contents of the Constitutional Court Decision No. 46/PUU-XIV/2016. In that decision, the Constitutional Court decided to refuse to extend the interpretation of Article 284, Article 285, and Article 292 of the Criminal Code (KUHP) because the Constitutional Court institutions did not have the authority to make new norms (Erdianto, 2017a). The Constitutional Court is a judicial institution that can only revoke the law (negative legislator) not as a positive legislator (Brewer-carías, 2010; Smith, 2010), so that the Constitutional Court cannot interfere the area and politics of criminal policy.

In 2007, the Indonesian economy was hit by the spread of hoax with the hashtags #RushMoney. This news was first posted by Abu Uwais's Facebook account with the status “AksiRushMoneymulaiberjalan. Ayo ambiluangkitadari bank milikkomunis” #RushMoney (Kholid, 2017). Rush money is the act of withdrawing large amounts of money together at the bank because of public concerns or distrust of banking and the economy nationally. The hoax is intended to incite the community and create panic in the hope that the community will withdraw their money from the bank.

The Indonesian political world was also horrified by the lies of RatnaSarumpaet who claimed to have been beaten to death at HuseinSastranegara airport, to attend an International conference in West Java on September 21, 2018 (Puspita, 2018).Ratna was a member of the National Campaign Team for presidential candidate Prabowo Subianto - Sandiaga Uno in 2019. Prabowo Subianto and Team of the National Winning Board Prabowo Subianto - Sandiaga Uno have accused Ratna of being a victim of very cruel persecution. Then this news was blown up in the mass media and accused the government of being very weak and the police institution was considered unprofessional in handling the case. After this news were spread and caused noise in the community, the police conducted an investigation by gathering some information and facts from the scene. The results of the investigation found that RatnaSarumpaet had never been to HuseinSastranegara Airport and an international conference was not held at the time mentioned. The police found that on September 21, 2018, RatnaSarumpaet was in Jakarta and was undergoing treatment at a beauty hospital in Menteng, Jakarta. Finally, RatnaSarumpaet admitted that the bruises and inertions on her face were not caused by acts of oppression but it were the result of plastic surgery.

The number of hoaxes spreading in the mass media and social media has resulted in unrest and panic in the community. To overcome the behavior of virtual media users, the government issued several laws to charge hoax spreaders such as Law No. 32 of 2002 concerning Broadcasting, Law No. 40 of 1999 concerning the Press and Law No. 1 of 1946 concerning Criminal Law Regulations. More over, the law that is often used to charge hoax spreaders is Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 concerning Information and Electronic Transactions (UU ITE) and Law No. 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination.

In Law No. 32 of 2002 concerning broadcasting determines that in making a broadcasting program, the content is prohibited from slander, incitement, misleading and/ or lying, promoting the element of violence, obscenity, gambling, abuse of narcotics and illegal drugs or contraposing ethnicity, religion, race, and intergroups. However, this provision can only be applied to mass media and electronic media, especially on television and radio.

The spread of false news using online media cannot be charged with this provision. Not much different from the Broadcasting Law, Law No. 40 of 1999 concerning the Press also regulates fraudulent news or broadcasts false news. However, the scope of the offense concerns the press or the media, both mass media and electronic media, especially on television and radio that deliberately spread false news to the public.

The massive development of information and communication exchanges that contain elements of lies among the public through online media, the government has issued an ITE Law to charge the perpetrators and spreaders of false news. In the aspect of law enforcement, law enforcers generally use Article 28 paragraph (1) of the ITE Law to charge the perpetrators of spreading false news in online media, both mass media and social media. Article 28 paragraph (1) stipulates that "Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions." The formulation of Article 28 paragraph (1) of the ITE Law which uses the phrase "spreading false news", actually adopts Article 390 of the Criminal Code using the term "broadcast false news". Article 390 of the Criminal Code determines that "anyone who intends to benefit themselves or others by opposing the right to reduce or increase the price of commodity, funds or securities by broadcasting false news, is sentenced to jail for two years and eight months."

According to Soesilo, to fulfill the elements contained in article 390 of the Criminal Code, the police as investigators must find the fact that the broadcast news was false news that could mislead anyone who received the news. One thing that is seen as a hoax is not only telling an empty news, but also telling about an actual event incorrectly (Soesilo, 1991). The elements and explanations in Article 390 are applied and in accordance with the provisions stated in Article 28 paragraph (1) of the ITE Law. A news that tells about an event incorrectly and spread it to the public is also called a hoax.

If the substance of Article 8 paragraph (1) is carefully viewed, there are two nomenclatures, namely the words "false news" and "misleading". These two terms have different meanings and stages of occurrence. In the phrase "spreading false news", what is regulated here is his actions, whereas in the word "misleading", things that are regulated here are the result of the act of spreading false news so that other people have a negative, mistaken or wrong view of the facts. However, if the hoax does not cause a person to view wrongly or cause harm to consumers and electronic transactions, then the punishment cannot be carried out.

In Article 28 paragraph (2) the ITE Law also stipulates that "Everyone who intentionally and without the rights to spread information with the aim of arousing hatred or hostility of certain individuals and/ or groups based on ethnicity, religion, race and intergroup (SARA)." This provision is considered to be more complete because it accommodates the prohibition on the spread of provocative news containing SARA. If someone writes status in a social network that contains news of provocations against SARA with the intention of inciting the public to hate or anarchist against certain groups, then Article 28 paragraph (2) of the ITE Law can be directly used by law enforcement officials to charge the perpetrators who write the status. However, Article 28 paragraph 1 and 2 of the ITE Law do not specify the punishments that can be imposed on perpetrators of spreading hoax. The punishments for violation of Article 28 of the ITE Law is actually regulated in Article 45A paragraph (1) and (2) of the ITE Law, namely a maximum imprisonment of six years and/ or a fine of at most Rp1 billion.

In the process of law enforcement against hoax spreading, it is often found that the perpetrators were charged by two laws at once namely Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions and Law No. 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination. For example, the Muslim_Cyber1 Instagram account that intentionally uploaded screenshots of fake conversations between National Police Chief Gen. Tito Karnavian and the Head of Public Relations of the Metro Jaya Police Kombes Argo Yuwono by using the SARA issue to criminalize the chairman of the Islamic Defenders Front (FPI) Habib Rizieq Shihab. Admin of the Muslim_Cyber1 Instagram account was charged with Article 28 paragraph (2) in conjunction with Article 45a of the ITE Law and or Article 4 letter (d) number (1) in conjunction with Article 16 of Law No. 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination.

The application of Law No. 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination against the perpetrators of spreading hoax is considered not to be as comprehensive as the ITE Law because it only prohibits people or groups from spreading hoax which contain the elements of racial and ethnic discrimination. Whereas the ITE Law is more comprehensive because hoaxes that can be convicted are not only those containing racial and ethnic discrimination but the scope is very broad, namely the provocative news using SARA issues. However, in the process of law enforcement, the Police and the Public Prosecutor included the two laws to charge the perpetrators of spreading hoax.

In the case of spreading false news by RatnaSarumpaet, the Metro Jaya Police charged Ratna with Articles 14 and 15 of Law No. 1 of 1946 concerning Criminal Law Regulations and Article 28 juncto Article 45 of the ITE Law regarding the spread of hoax on her persecution. As a result of the hoax, Ratna was threatened with a maximum sentence of 10 years imprisonment. In Article 14 paragraph (1) Law No. 1 In 1946, was determined that "Anyone who broadcasts news or false notices, intentionally issues disputes among the people, is punished with a maximum sentence of ten years imprisonment." Mahfud MD expressed a different opinion, that the Ratna's case was ideally convicted by Law No. 1 of 1946 concerning Criminal Law Regulations, but Ratna's case could not be convicted by the article of ITE Law because Ratna did not spread this information through virtual media (Duanto, 2017).

To prevent the spread of false news to the public, the government through the Ministry of Information and Communication blocked the sites, accounts and social media applications containing false news. Based on Presidential Regulation No. 53 of 2017, the government established the National Cyber and Code Body (BSSN) with the aim of safeguarding the security and sovereignty of Indonesia in the virtual world, including controlling hoax which could disrupt the stability of national security. According to the Chairman of the Indonesian Internet Service Providers Association (APJII), the duties and roles of the BSSN are not limited to prevention of hoax, but the BSSN is generally responsible for cyber security in Indonesia from hacking and wannacry actions that can disrupt cyber activities in Indonesia (APJII, 2018).

To prevent the spread of hoax, the public must ascertain and examine provocative news headlines, check the news writers, see the address of news sites, distinguish facts from opinions, examine primary sources scientifically and compare them with official news sources. Srijan Kumar said that one approach in preventing crime

is to influence the views of the public about crime through mass media and social media (Kumar, 2018). According to Allcott and Grentzkow, to prevent the occurrence of crime through mass media and social media, it is necessary to provide understanding to the public to know the frequency, modus operandi, behavioral characteristics so that people will not be victims of crime (Allcott & Grentzkow, 2017). Crime cases and criminal threats need to be published and written through the mass media to provide information to the public while making public opinion so that law enforcers get support from the public (Widodo, 2013).

IV. CONCLUSION

Spread of false news is already exist before internet technology emerged in the midst of society. In this era, information and communication technology is developing so rapidly that information can be quickly created and spread to the public. The existence of information and communication technology is now able to clarify the position and flow of communication, where there are parties who produce, distribute and consume information. Hoax crime can occur in two stages, namely making and spreading it to the community in order to create panic, doubt, noise, trouble or cause distrust to someone, group or government.

The hoax outbreak is inseparable from the mindset and character of some people, who prioritize their desire to always be exist, be praised and follow everything's up to date in obtaining and spreading information. They tend to justify the news if it's the thoughts of the characters or figures they support and count the news as hoax if it incriminates the thoughts they don't support, without first examining the truth of the news. This gap is widely used by irresponsible individuals to make hoax assisted by technology in manipulating news in the form of text, images and videos so that it looks as if it is a fact. To bring order to virtual media users, the government issued various laws such as Law No. 19 of 2016 concerning Amendment to Law No. 11 of 2008 concerning Electronic Information and Transactions and Law No. 40 of 2008 concerning the Elimination of Race and Ethnic Discrimination. But sometimes the hoax was made but it was not spread through online media like the case of hoax by RatnaSarumpaet. This case can be prosecuted under Law No. 32 of 2002 concerning Broadcasting, Law No. 40 of 1999 concerning the Press and Law No. 1 of 1946 concerning Criminal Law Regulations.

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