

Governing under Necessity in Muslim-majority States and the Constitutional Limits of Emergency Executive Power

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ABSTRACT

Emergency powers were examined through a comparative qualitative institutional analysis of Indonesia, Pakistan, Egypt, and Tunisia. The study asked how emergency authority was activated, supervised, and terminated, and whether Islamic public-law reasoning could clarify the limits of exceptional executive power without being treated as an empirical variable. Constitutional texts, emergency legislation, selected judicial and executive materials, and country-specific scholarship were analysed through doctrinal research and structured focused comparison. The findings showed that the four systems differed most sharply in the institutional life cycle of emergency power. Indonesia displayed fragmented controls, Pakistan layered parliamentary procedures, Egypt a fixed temporal structure, and Tunisia a cause-based exit rule centered more heavily on presidential judgment. No consistent relationship was found between explicit Islamic constitutional language and the density of formal emergency constraints. The article therefore developed a Constrained Necessity Framework and the concept of deactivation asymmetry to explain how emergency authority could remain bounded after its initial activation.



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INTRODUCTION

A constitutional emergency does more than enlarge executive discretion. It changes who may decide, how quickly a decision can take effect, and when ordinary routines may be displaced. The legal difficulty begins once a threat is accepted as exceptional. Government must be able to act before delay defeats the purpose of action, yet concentrated authority can make the emergency harder to end. Work on emergency constitutions has moved beyond the assumption that crisis necessarily suspends constitutional government. The more useful question concerns the design that keeps extraordinary authority open to challenge and capable of termination (Ferejohn & Pasquino, 2004) (Bjørnskov & Voigt, 2018) (Ginsburg & Versteeg, 2021).

Authorization is only one part of that design. Legislative confirmation can force the executive to defend the continued need for exceptional action. Judicial review may test legality where courts have jurisdiction and institutional capacity. A fixed expiry rule can also alter the practical burden of justification because continuation then requires a new legal act. These mechanisms do not guarantee restraint. They change the route through which emergency authority must be maintained, a broader concern also found in work on the misuse of coercive legislation (Kadir, 2025b). Recent studies of pandemic government and executive aggrandizement support this more institutional reading of crisis government (Petrov, 2020) (Ginsburg & Versteeg, 2021) (King, 2026).

Muslim-majority states provide a demanding setting for this problem because their constitutional orders vary sharply. Some give Islamic norms an express constitutional position. Others place religion within state identity without making Sharia a source of legislation. Their emergency clauses are equally diverse. Quantitative work on Organisation of Islamic Cooperation states has shown that emergency design is associated with declaration practices and repression after terrorist events (Bjørnskov & Voigt, 2022). That finding matters, but an index cannot show how a particular

constitution distributes the judgment that an emergency exists or how it arranges the return to ordinary government.

Islamic public law adds a different question. Necessity permits departure from an ordinary rule when serious harm cannot otherwise be avoided, but the permission is limited. Islamic legal maxims tie necessity to the need that gives rise to it. Work on *maslahah* likewise warns against treating public interest as unrestricted discretion (Izzi Dien, 2004) (Opwis, 2005) (Kamali, 2025a). *Siyasa shar'iyyah* gives rulers room to pursue public purposes, yet the discretion remains connected to justice and legitimate government instead of personal will (Kamali, 2019). These doctrines do not supply a modern emergency constitution. Their value here lies in the limit they place on exceptional permission, an evaluative use of Islamic legal objectives also found in *maqasid*-based work on contemporary criminal policy (Kadir et al., 2026).

Emergency scholarship and Islamic legal theory approach the same difficulty from different directions. The former explains how constitutional rules distribute exceptional power. The latter asks when an exceptional departure remains justified. Country studies already describe emergency rule in Indonesia, Pakistan, Egypt, and Tunisia (Hosen, 2010) (Ghias, 2010) (Reza, 2007) (Ghannouchi, 2023). An absence claim is therefore untenable. The unresolved problem is narrower. Limited necessity has rarely been followed through the institutional life of an emergency, from activation to external scrutiny and eventual termination, without assuming that Islamic doctrine caused the constitutional design.

Indonesia, Pakistan, Egypt, and Tunisia were chosen because the comparison places different forms of Islamic constitutional reference beside different emergency arrangements. Indonesia has no constitutional clause making Sharia a source of legislation and leaves much of its state-of-danger regime to statute. Pakistan expressly constitutionalizes Islamic sovereignty and uses detailed federal emergency procedures. Egypt combines a Sharia-source clause with a fixed parliamentary and temporal scheme. Tunisia's 2022 Constitution invokes the objectives of Islam while leaving the endpoint of exceptional measures dependent on the disappearance of their causes. The contrast is useful because religious constitutional language and emergency design do not move together in any obvious sequence. The variation is used for theory refinement, not for inference about all Muslim-majority states.

The article asks how these four constitutional orders activate emergency executive authority and how other institutions may supervise its continuation. It also asks how each arrangement organizes exit from exceptional government. The comparison does not test whether a particular safeguard causes democratic survival. Nor does it treat stronger Islamic language as evidence of greater restraint. The claim remains institutional and deliberately modest. The inquiry follows the legal architecture through which necessity becomes public authority, then examines whether another institution can revisit that judgment and whether the arrangement contains a credible route back to ordinary government.

The main argument concerns control over necessity. Emergency power becomes harder to contain when the institution that identifies the danger can also preserve the measures and decide when their legal basis has disappeared. This problem is described here as deactivation asymmetry. A constitution may regulate entry carefully while leaving exit dependent on the executive judgment that activated the exception. The risk is institutional and does not require executive bad faith. It arises when one office dominates both the factual claim that justifies emergency power and the decision that the claim has ended. The Constrained Necessity Framework is built around that problem. The maxim *al-darurah tuqaddar bi-qadariha* serves as a normative anchor for limited authorization.

RESEARCH METHODS

Constitutions allocate emergency power through rules with different legal functions, so they cannot be treated as interchangeable observations. Doctrinal legal analysis is used to identify the authority created by each rule, its legal preconditions, and the procedures that govern continuation or termination. Structured focused comparison then places the cases against the same institutional questions. This combination allows legal detail to remain visible while avoiding the assumption that similar constitutional language performs the same role in different systems (Hutchinson & Duncan, 2012).

Case selection followed two forms of variation that matter to the argument. The four states differ in the constitutional status given to Islam and in the way emergency authority is brought into and out of force. The design is purposive and makes no claim to representativeness. It does not produce population estimates or support claims about a single Muslim constitutional family. The comparison is

instead a controlled way to ask whether visibly different Islamic constitutional identities coincide with equally different emergency procedures. That separation is necessary before any normative claim about Islamic governance can be made responsibly.

Primary materials are the constitutional texts currently in force in Indonesia, Pakistan, Egypt, and Tunisia. Indonesia is read through Articles 12, 22, and 29 of the 1945 Constitution, Law No. 23 Prp/1959, and Constitutional Court Decision No. 138/PUU-VII/2009 where the distinction between a state of danger and emergency lawmaking matters. Pakistan is examined through the 1973 Constitution as amended through November 2025, especially Articles 2A, 232, and 233. Egypt is read through Articles 2 and 154 of the 2014 Constitution as amended in 2019. Tunisia is examined through Articles 5 and 96 of the 2022 Constitution. Secondary scholarship supplies context but does not replace these provisions as comparative data.

Activation concerns the legal threshold for exceptional power and the institution able to invoke it. The inquiry also asks whether the trigger is defined in terms that can later be assessed against the measures taken. Supervision concerns whether another institution must confirm, contest, or review continuation under the relevant constitutional arrangement. Exit concerns the rule that ends the exception and identifies who carries the burden of showing that continuation remains justified. Rights restrictions are considered where they form part of the constitutional emergency scheme, but they are not converted into a separate score. The comparison uses these questions as organizing devices. No numerical model is constructed at any stage of comparison.

Historical episodes are used only to show why formal design should not be mistaken for practical effectiveness. Egypt's long experience with normalized emergency law and Pakistan's shifting judicial responses make that distinction unavoidable (Reza, 2007) (Ghias, 2010) (Cheema, 2018). Tunisia's 2021 rupture occurred under the earlier Constitution and is treated as context for the institutional stakes of exceptional government, not as evidence of how Article 96 must operate in every future crisis (Ridge, 2022) (Tamburini, 2023). The article therefore makes claims about legal architecture and limited institutional implications.

Darurah, *masalah*, *maqasid al-shariah*, and *siyasa shar'iyah* are used only at the normative stage of the analysis. No case is coded as more Islamic because it contains a particular clause, and the article does not infer that constitutional actors relied on Islamic jurisprudence unless the legal material says so. The Islamic sources help assess the idea that exceptional permission remains limited by its reason and extent. They do not supply an empirical measure of constraint. Modern parliamentary approval, judicial review, and expiry rules are treated as constitutional mechanisms that may correspond with that limiting logic. They are not presented as institutions deduced from classical Islamic law (Arjomand, 2007) (Opwis, 2005) (Kamali, 2019) (Kamali, 2025b).

RESULTS AND DISCUSSION

Current Emergency Architecture

Indonesia places the basic state-of-danger power in Article 12. The President declares the condition, while legislation determines the circumstances and consequences. Law No. 23 Prp/1959 supplies much of the continuing framework and distinguishes several levels of emergency. The Constitution itself does not impose a fixed maximum duration or a parliamentary confirmation sequence for Article 12. This makes the formal structure unusually dispersed. Indonesian scholarship has long noted the resulting dependence on statute and the difficulty of locating a single constitutional life cycle for declaration, supervision, and termination (Hosen, 2010) (Ayuni et al., 2022).

Article 22 creates a different mechanism. A Government Regulation in Lieu of Law may be issued when compelling urgency requires rapid legislation, but the measure must be submitted to the House of Representatives and loses force if approval is withheld. Constitutional Court Decision No. 138/PUU-VII/2009 also established that such regulations are reviewable and articulated conditions for compelling urgency. The two provisions should not be merged. Article 22 does, however, show that Indonesian constitutional practice accepts external controls over urgent executive lawmaking even though Article 12 itself remains sparse (Tenrilawa et al., 2026).

Pakistan regulates entry into emergency government with greater procedural detail. Article 232 permits a presidential proclamation where war, external aggression, or an internal disturbance beyond provincial capacity threatens national security. An internally triggered emergency ordinarily requires a provincial resolution. If the President acts without it, parliamentary approval must follow within the

constitutional timetable. A proclamation lapses after two months unless it receives the required approval. Article 233 can nevertheless narrow access to judicial enforcement of specified rights. The design therefore combines legislative involvement with substantial legal consequences for rights during the emergency (Cheema, 2018).

Egypt gives emergency duration a more definite constitutional form today. Article 154 requires presidential consultation with the Cabinet and submission to the House of Representatives within seven days. Parliamentary approval is necessary, the initial period cannot exceed three months, and one further period requires a two-thirds vote. The legislature cannot be dissolved while the emergency remains in force. Egypt's history shows that clear formal limits can coexist with practices that normalize exceptional government, so Article 154 cannot be read as evidence of effective restraint by itself (Reza, 2007) (Taha & Khalil, 2020).

Tunisia's Article 96 allows the President to take exceptional measures when imminent danger threatens the Republic, security, or independence and obstructs normal state functioning. Consultation with the Head of Government and the presiding officers of the two chambers is required. The chambers cannot be dissolved during the exceptional period. Parliamentary approval is not made a condition for continuation, and the article provides no fixed sunset. The measures cease when their causes cease. Article 96 also does not require periodic reauthorization while the causes are said to persist. That formula preserves a substantive idea of temporariness while leaving the determination of the endpoint closely tied to presidential judgment (Ghannouchi, 2023) (Martínez Fuentes, 2025). Table 1 summarizes the current constitutional architecture across the four cases.

Table 1 Comparative Emergency Governance Architecture

Country	Emergency trigger	Initiating authority	Legislative role	Exit rule	Islamic constitutional reference
Indonesia	State of danger. Detail largely statutory.	President	No Article 12 confirmation rule. Article 22 has a separate DPR approval route.	No fixed Article 12 sunset.	Article 29 has no Sharia-source clause.
Pakistan	War, external aggression, or internal disturbance beyond provincial control.	President	Provincial and parliamentary requirements apply under Article 232.	Lapse without approval. No simple outer cap after continuation.	Article 2A incorporates the Objectives Resolution.
Egypt	State of emergency.	President after Cabinet consultation	House approval within seven days. Extension needs a two-thirds vote.	Three months with one similar extension.	Article 2 makes Sharia principles the principal source of legislation.
Tunisia	Imminent danger obstructing normal state functioning.	President after consultation	Consultation is required. Article 96 does not require legislative approval.	Cause-based cessation with no fixed sunset.	Article 5 refers to the objectives of true Islam.

Activation and Supervision

The four systems differ less in whether the executive has an initiating role than in what must happen after that role is exercised. Indonesia gives the President broad constitutional space under Article 12 and moves much of the legal detail outside the constitutional text. Pakistan places more conditions around certain proclamations and brings Parliament into the continuation process. Egypt requires parliamentary approval under a short timetable. Tunisia requires consultation but not legislative authorization. The important distinction lies in whether the executive's first judgment of danger becomes legally sufficient or must survive an additional institutional decision.

Supervision matters because an emergency declaration is also a claim about facts. The executive asserts that ordinary law cannot adequately meet the threat and that exceptional measures remain necessary. A legislature asked to approve continuation must make its own institutional judgment, even when political conditions make that judgment weak. Judicial review can serve a different function where jurisdiction exists. It tests legality rather than political wisdom. Neither mechanism guarantees restraint, but both prevent necessity from being entirely self-validating in legal form (Petrov, 2020) (Ginsburg & Versteeg, 2021) (King, 2026).

Indonesia exposes the difficulty of treating supervision as a single constitutional variable. Article 12 contains no approval mechanism comparable with Pakistan or Egypt. Yet Article 22 gives the House a clear role over emergency lawmaking, and constitutional review of Perppu has become part of the surrounding legal environment. Those controls cannot simply be transferred to every Article 12 measure. The safer conclusion is narrower. Indonesian emergency authority is supervised through

fragmented constitutional and statutory routes rather than through one integrated emergency procedure (Ayuni et al., 2022).

Pakistan and Egypt show why formal layering should not be mistaken for practical effectiveness. Pakistan's detailed procedures developed alongside a history in which courts sometimes accommodated extra-constitutional power and later expanded judicial authority. Egypt's current text contains a notably clear parliamentary timetable even though emergency rule had previously become a durable feature of government. Formal supervision still matters because it identifies legal veto points and burdens of justification. Historical experience matters for a different reason. It warns against using the existence of those rules as a proxy for compliance or democratic resilience (Ghias, 2010) (Cheema, 2018) (Reza, 2007).

Tunisia places more of the immediate constitutional judgment inside the presidency. Consultation creates an institutional contact point but does not give the consulted actors a formal power to authorize continuation under Article 96. The prohibition on dissolving the chambers protects the existence of representative institutions during the exceptional period, yet existence and control are not the same. This arrangement is especially important after the country's recent constitutional transformation because it separates institutional presence from institutional consent (Ridge, 2022) (Tamburini, 2023) (Ghannouchi, 2023). Table 2 brings the three dimensions together without ranking the cases.

Table 2 Structured Comparison of Activation, Supervision, and Exit

Country	Activation	Supervision	Exit	Institutional pattern
Indonesia	Broad entry point with statutory detail.	Controls are dispersed across separate legal routes.	No fixed Article 12 sunset.	Fragmented constraint architecture
Pakistan	Conditional presidential proclamation.	Parliamentary approval and lapse rules create veto points.	Structured continuation without one terminal date.	Layered parliamentary architecture
Egypt	Presidential declaration after Cabinet consultation.	House approval and a higher threshold for extension.	Fixed period with one possible extension.	Temporally bounded formal architecture
Tunisia	Presidential measures after consultation.	Consultation and protection against dissolution without mandatory approval.	Cause-based cessation with no fixed renewal cycle.	Executive-centered exit architecture

Exit from Necessity

Exit rules expose a problem that is easy to miss when emergency law is studied mainly at the moment of declaration. A constitution may demand a serious trigger and still leave exceptional authority difficult to deactivate. Automatic expiry changes that relationship. Once the legal period ends, continuation needs a fresh act of approval. A cause-based endpoint works differently. Authority continues until the relevant institution accepts that the factual basis has disappeared. The two designs place the burden of justification in different locations, even if both describe emergency government as temporary (Scheuerman, 2006).

Egypt makes this burden particularly visible. Its three-month period forces renewal into a new parliamentary decision and places a higher voting threshold on extension. Pakistan also uses lapse rules, although continued emergency authority does not face the same simple absolute outer cap after parliamentary approval. Indonesia's Article 12 supplies no fixed constitutional sunset. Tunisia uses the disappearance of causes as the endpoint. These arrangements should not be ranked on a single scale because their legal mechanisms differ. They do, however, distribute responsibility for continuation in noticeably different ways.

Deactivation asymmetry arises where the actor that identifies the emergency also retains substantial control over deciding whether the grounds for exceptional measures still exist. Executive participation in exit is not itself the problem. Governments often hold the best operational information about a crisis. The difficulty appears when no external institution has to revisit the continuing legal basis of the exception. Fixed expiry reduces that asymmetry because the emergency ends unless a new act of authorization occurs. Periodic legislative renewal can have a similar effect. Judicial review may add legal contestation where the issue is justiciable. None of these devices removes political pressure, but each changes who must defend continuation.

Tunisia provides the clearest illustration in the current comparison. Article 96 ties termination to the disappearance of causes but does not require periodic parliamentary reauthorization. The

President must announce the end of the measures, so the formal route back to normality remains closely connected to the institution that invoked the danger. Egypt places more of the continuation burden on Parliament through renewal. Indonesia's problem is different. The sparse constitutional text leaves the mechanics of exit under Article 12 less clearly constitutionalized. Pakistan falls between these patterns because parliamentary lapse rules are explicit but do not create a single terminal date after approval.

Exit changes how emergency constraint should be described. Counting safeguards can hide the sequence through which they operate. A legislature that approves an emergency once is not equivalent to one that must renew it. Consultation is not the same as consent. A rule that measures end when their causes end is also different from a sunset that expires without further executive judgment. These differences alter the burden of sustaining necessity and explain why a simple stronger or weaker label misleads. What matters is who must act when the exception is to continue, who can refuse continuation, and who can force a return to ordinary law.

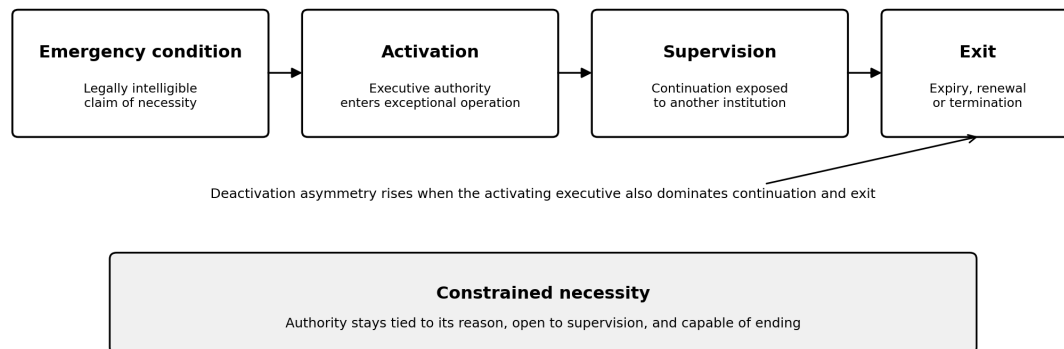
Bounded Necessity in Islamic Public Law

Islamic legal reasoning does not remove these institutional differences, but it gives a useful account of why exit matters. *Darurah* justifies an exception because a serious need makes ordinary compliance inadequate. The permission remains connected to that need. The maxim *al-darurah tuqaddar bi-qadariha* expresses the limiting side of the doctrine and sits alongside the broader juristic rule that what is permitted for a reason loses that permission when the reason disappears. *Maslahah* is also structured by legal argument and cannot simply mean whatever a ruler regards as useful (Izzi Dien, 2004) (Opwis, 2005) (Kamali, 2025a).

Modern safeguards should not be presented as direct products of those doctrines. Parliament, constitutional review, and sunset clauses emerged from histories that cannot be collapsed into *fiqh*. The relationship claimed here is one of normative correspondence. Islamic legal theory supplies a reason to distrust an exception that expands beyond its necessity. Constitutional law supplies techniques through which that limit can be made contestable. The traditions therefore meet at the level of justification, not origin. A legislature need not possess an Islamic pedigree to perform a function compatible with bounded necessity. The same is true of judicial review and expiry rules. Keeping that distinction visible avoids an unsupported genealogy of Islamic government.

Siyasa shar'iyah strengthens the point when it is understood as public discretion directed toward legitimate ends without implying freedom from law. Kamali describes it as a field in which rulers may choose measures that serve good government while remaining answerable to the objectives of justice and the Sharia (Kamali, 2019). *Maqasid* reasoning likewise connects public action to protected interests and ordered purposes rather than an undefined assertion of benefit (Kamali, 2025b). Emergency discretion can therefore be broad without becoming conceptually unlimited.

The Constrained Necessity Framework shown in Picture 1 follows from that limited claim. Activation concerns whether exceptional authority rests on a legally intelligible condition and who may invoke it. Supervision becomes relevant once the first decision has been made because another institution may have to confirm, contest, or review continuation. Exit then asks whether the emergency contains a route toward termination that does not depend entirely on the original executive judgment. The framework does not score states and does not assume that every form of supervision has the same force. It identifies where a constitution places the burden of sustaining necessity and where deactivation asymmetry may arise.



Picture 1 Constrained Necessity Framework

The comparison also shows why Islamic constitutional language is a poor proxy for emergency constraint, a caution consistent with work on moral criminalization across modern Muslim states (Kadir, 2025a). Pakistan's Objectives Resolution, Egypt's Sharia-source clause, Tunisia's reference to the objectives of Islam, and Indonesia's different religious constitutional language coexist with markedly different emergency arrangements. No monotonic relationship appears in these four cases. The finding is modest but important. Islamic identity in a constitution does not tell us how necessity will be institutionally processed. The relevant comparison lies in the legal organization of activation, supervision, and exit (Arjomand, 2007) (Bjørnskov & Voigt, 2022).

Bounded authorization is therefore a better description of the normative contribution than an Islamic model of emergency government. Necessity can justify temporary departures while also limiting their extent. A modern constitution gives that limit practical form only when some institution must revisit the factual or legal basis of continuation and when exceptional authority remains capable of ending. This formulation keeps the argument within the evidence. It also makes clear why the article does not claim that Islamic law prevents authoritarianism or that any single safeguard produces democratic outcomes.

CONCLUSION

Emergency constitutions differ most meaningfully in the legal life cycle they create for exceptional authority. Indonesia disperses control across a sparse constitutional clause, statute, emergency lawmaking, and constitutional review. Pakistan formalizes parliamentary involvement and lapse rules while allowing significant rights consequences. Egypt uses a comparatively definite approval and renewal timetable. Tunisia requires consultation and protects the chambers from dissolution, yet its exit rule remains cause-based and closely connected to presidential judgment. These are different architectures, not points on a single scale of constitutional quality.

The comparison brings the problem of exit into sharper view. Emergency power is not fully bounded merely because its initial trigger is legally defined. Constraint also depends on who must justify continuation and whether another institution can require the exception to be reconsidered. Deactivation asymmetry captures the risk created when the authority that identifies necessity also retains dominant control over its persistence and termination. Fixed expiry, reauthorization, and review can reduce that asymmetry, although the present design cannot establish their causal effect on regime outcomes.

Islamic public law contributes a normative limit and offers no institutional blueprint. *Darurah* permits exceptional action only while the necessity remains legally relevant, while *maslahah* and *siyasa shar'iyah* do not convert public interest into unrestricted executive will. The Constrained Necessity Framework uses that logic to clarify the constitutional problem of bounded authorization. It does not derive modern institutions from classical jurisprudence. Its value lies in showing why the reason for exceptional power must remain connected to the conditions that keep it lawful.

The analysis remains limited to formal constitutional arrangements and selected legal context. It does not measure judicial independence, executive compliance, rights outcomes, or the actual duration of emergency government across time. The cases also cannot represent the diversity of Muslim-majority states. Those limits are deliberate because the available evidence supports an institutional comparison, not a claim about regime performance. A later study could test deactivation asymmetry through longitudinal coding, process tracing, or interviews with constitutional actors. The present contribution is narrower and better supported by the data. Necessity is institutionally constrained when its activation can be questioned, its continuation can be supervised, and its exit does not rest solely on the executive that invoked it.

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