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Application Of Additional Criminal Sanctions In The Form Of Restitution In Corruption Offences In Indonesia

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Abstract. *One way to restore the lost state corruption is to impose additional punishment in the form of restitution payments. This effort provides results in the form of income to the state treasury from the payment of restitution. Of the several convicts who have been deposited the amount of restitution payments. Restitution as an additional punishment in corruption cases must be understood as part of the efforts to punish those who violate the law that is violated is a further act of corruption. Corruption has resulted in poverty so that the perpetrators of corruption must be sentenced to payment of restitution due to corruption that has occurred so far, in addition to harming state finances and the state economy, it also hampers the continuity of national development.The type of research conducted in the preparation of this research is normative juridical, which is viewed from the object of research is positive law that examines the rules of law governing criminal acts of corruption in an effort to prevent the prevention of criminal acts of corruption. The data obtained in this research will be analysed qualitatively in accordance with the specification of the nature of the research to examine between theory and practice in the form of criminal acts of corruption in an effort to prevent the prevention of criminal acts of corruption. Qualitative data analysis is to explore social facts not only on the surface but also to explore what actually happens behind the real events. Corruption that results in state financial losses in the concept of eradicating corruption is all expenditures or uses that are a burden on state finances where the expenditure or use of state money is based on unlawful acts, including reduced income or income to state finances based on unlawful acts, unlawful acts that result in state financial losses must be caused by acts that contain the nature of criminal law (wederrechtelijk). The imposition of restitution payments in the eradication of corruption as stipulated in Article 18 of the Law on the Eradication of Corruption is a means that can be applied to realise recovery efforts or recovery of state finances caused by corruption, restitution payments are imposed on the perpetrators of corruption in the amount of property obtained from corruption and the amount of property that has been transferred by the perpetrator to other parties where the other party is not prosecuted and does not commit acts against criminal law (wederrechtelijk).*

Keywords: *Sanctions, Additional Crimes, Corruption, Corporations*

1. INTRODUCTION

Corruption cases in Indonesia are at the top of the list of cases that are prioritised to be handled immediately in Indonesia, both in prevention, punishment, and restoring the original situation. In this case, the role of the legislature, law enforcement officials, especially corruption eradication agencies or courts is important considering that the process related to law enforcement in Indonesia has been regulated in such a way through criminal procedural law that will help enforce or implement material criminal law against concrete cases. In this case, the criminal offence of corruption that actually occurred in front of him. One of the elements of corruption offences in Indonesia is the existence of state financial losses, specifically in Article 2 paragraph (1) and Article 3 of Law No. 31 of 1999 concerning Eradication of Corruption Crimes which has been amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of Corruption Crimes.

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State financial losses in the dimension of criminal law, in this case the crime of corruption, are as regulated in articles 2, 3 and 4 of Law No. 31 of 1999 concerning the Eradication of the Crime of Corruption as amended by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999. As previously stated, in this criminal offence, state financial loss is one of the elements. In the law, there is no clear explanation of how the state financial losses stipulated in articles 2, 3, and 4 as one of the elements of the criminal offence of corruption referred to in it, there is only the state finances as contained in the explanatory chapter, namely: "The state finances referred to are all state assets in any form, separated or non-separated, including all parts of the state's assets and all rights and obligations arising out of:

(a) being in the possession, management, and accountability of officials of State institutions, both at the central and regional levels
(b) is in the control, management, and accountability of State-Owned Enterprises/Region-Owned Enterprises, foundations, legal entities, and companies that include state capital, or companies that include third party capital based on agreements with the State"

One way to restore the lost state corruption is to impose additional punishment in the form of restitution payments. This effort provides results in the form of income to the state treasury from the payment of restitution. Of the several convicts who have been deposited the amount of restitution payments. Restitution as an additional punishment in corruption cases must be understood as part of the efforts to punish those who violate the law that is violated is a further act of corruption.

Corruption has resulted in poverty so that the perpetrators of corruption must be sentenced to restitution payments due to the criminal acts of corruption that have occurred so far, in addition to harming state finances and the state economy, it also hampers the continuity of national development.

The definition of payment of restitution can be drawn from Article 18 of Law No. 31 Year 1999 paragraph (1) letter b "Payment of restitution in an amount equal to the property obtained from the crime of corruption". In determining and proving the amount of property obtained by the convict from the crime of corruption, there is no exception to the goods that are not in his control or have been transferred when the verdict is read. In practice, the amount of restitution determined by the judge varies. The factor that dominates several decisions regarding the determination of the amount of restitution follows the judge's consideration with a separate calculation, whether the proceeds of corruption have been returned or the corruption is carried out jointly and the restitution is charged jointly and severally.

The purpose of restitution is to punish corruptors as severely as possible in order to deter them and in order to control state finances that have been lost as a result of an act of corruption. Consequently, the eradication of corruption is not solely aimed at subjecting corruptors to exhilarating prison sentences, but must also be able to return the State's losses that have been corrupted. The return of state losses is expected to be able to cover the state's inability to finance various aspects that are urgently needed. Restitution in corruption cases has received less attention to be discussed in writing. The problem turns out to be quite complicated, including the imperfect set of regulations that accompany this issue. One of them is that the application of Law No.20 of 2001 is still constrained due to the incomplete regulation of the procedures of the corruption court in terms of returning state money that has been corrupted. As is known, Law No. 20 of 2001 only makes a few provisions regarding special procedural law in the eradication of corruption in addition to the procedural law regulated in the Criminal Procedure Code (KUHAP).

2. RESEARCH METHODS

Research is a key tool in the development of science and technology. This is because research aims to reveal the truth systematically, methodologically and consistently. Through the research process, data that has been collected and processed is analysed and constructed. Because research is a scientific tool for the development of science and technology, the research methodology applied must always be adjusted to the science that is the parent.

The type of research conducted in the preparation of this research is a combination of normative and empirical juridical. This research is called normative juridical because the object of research is positive law that examines the legal rules governing the crime of corruption in an effort to prevent the prevention of criminal acts in the Correctional Institution Klas I Medan in the crime of corruption. This research is called empirical juridical research because in addition to examining the laws and regulations relating to the form of coaching, it also observes how reactions and interactions occur when the norm system works. This research is also called law in action research.

The results of a normative study in order to be of better value or to be more precise in the study, researchers need to use a legal approach in each analysis, this approach will be able to determine the value of the results of the study. This research is a normative juridical research, so the approach taken is a statutory approach, because what will be studied are various legal rules that become the focus and central theme of a study. The legal analysis produced by a normative research using a statutory approach will produce more accurate research. The data

required is secondary data relevant to this research problem. Sources and types of data in this research are secondary data obtained from research materials in the form of legal materials, consisting of:

a. Primary legal materials, which are binding legal materials and consist of: Preamble of the 1945 Constitution Body of the 1945 Constitution TAP MPR Law Number 8 of 1981 concerning the Criminal Procedure Code, Criminal Code,
b. Secondary legal materials, namely materials that provide explanations of primary law, such as the Draft Criminal Code and others.Law number 30 of 2002 concerning the eradication of corruption.
c. Tertiary legal materials or supporting legal materials, namely materials that provide guidance and explanation of primary legal materials and secondary legal materials, in the form of dictionaries, encyclopedias, scientific journals, magazines, newspapers and so on which are used to complement or support research data.

3. DISCUSSION AND ANALYSIS

Firstly, with regard to the definition of state finances, the definition of state finances in Law No. 31/1999 on the Eradication of Corruption as amended by Law No. 20/2001 on the Eradication of Corruption (Law on the Eradication of Corruption) in the general explanation outlines the definition of state finances as all state assets in any form that are separated or not separated, including all parts of the state assets and all rights and obligations arising from them:

1. Being in the control, management and accountability of officials of state institutions both at the central and regional levels;
2. Being in the control, management and responsibility of State-Owned Enterprises/Region-Owned Enterprises, Foundations, legal entities and companies that include third-party capital based on agreements with the state;

Furthermore, based on Article 1 point 1 of Law Number 17 Year 2003 on State Finance (Law on State Finance), the definition of state finances is all state rights and obligations that can be valued in money, as well as everything in the form of money and goods that can be used as state property in connection with the implementation of these rights and obligations.

Guided by the provisions of the Law on the Eradication of Corruption and the Law on State Finance mentioned above, state finances can be seen in a broad sense and in a narrow sense, state finances in a broad sense include the rights and obligations of the state that can be valued in money, including money and state-owned goods that are not included in the state budget, both the State Revenue and Expenditure Budget (APBN) and the Regional Revenue

and Expenditure Budget (APBD). Meanwhile, state finances in a narrow sense are limited to state rights and obligations that can be valued in money, including money and state property listed in the state budget, both the State Budget (APBN) and the Regional Budget (APBD).

With regard to separated state assets as stated in the general explanation of the Law on the Eradication of Corruption and Article 2 letter f of the Law on State Finances, it is the participation of state capital in the management of state companies, which then in the formulation of the provisions of Article 1 number 10 of Law Number 19 of 2003 concerning State-Owned Enterprises, regulates that separated state assets are state assets originating from the State Budget to be used as state capital participation in Persero and or Public Companies and other Limited Liability Companies. Separated state assets as state equity participation in Persero and/or Public Companies and Limited Liability Companies based on the Constitutional Court Decision Number 48/PUU-XI/2013 and Constitutional Court Decision Number 62/PUU-XI/2013, provides confirmation that separated state assets as state equity participation in State-Owned Enterprises are state finances.

Then examining the provisions of Article 1 number 2 of Law Number 6 of 2014 concerning Villages, provides an understanding that village government is the administration of government affairs and the interests of the local community in the system of government of the Unitary State of the Republic of Indonesia, Article 72 paragraph 1 regulates that village revenues come from village original income, APBN allocations, local tax revenue sharing and city / regency restribus, Based on this, village government finances are also included in the scope of state finances, both those included in the village budget, both the Village Revenue and Expenditure Budget (APBDesa) and those not included in the village budget, in the form of village assets separated in Village-Owned Enterprises (BUMDesa).

Based on the above description, the definition of state finances is all state assets in any form that are separated or not separated, including all parts of state assets and all rights and obligations arising, are in the control, management and accountability of state agency officials at the central, regional and village government levels, including those in the control, management and accountability of State-Owned Enterprises / Regional-Owned Enterprises / Village-Owned Enterprises, foundations, legal entities and companies that include third party capital based on agreements with the state or with regions or with villages.

Furthermore, the Supreme Audit Agency (BPK) uses four criteria for state losses, namely:

a. Reduced state assets and / or increased state obligations that deviate from the provisions of applicable laws and regulations. While the state's wealth is a consequence of the receipt of favourable income and expenses that are a burden on state finances (income minus state expenditure).
b. Non-receipt of part or all of the revenue that benefits the state finances, which deviates from the provisions of the applicable laws and regulations.
c. Part or all of which becomes a greater state financial burden or should not be a state financial burden, which deviates from the provisions of applicable laws and regulations.
d. Any increase in state obligations resulting from a commitment that deviates from the provisions of applicable laws and regulations.

State financial losses must be losses that result directly from a form of unlawful self-enrichment (or abuse of authority vide Article 3), which can take many forms and criteria, including:

a. Increased state obligations that burden state finances as a result of actions that deviate from laws and regulations or are against the law (wederrchtekijk).
b. Non-receipt of part or all of the revenue that should have been received by the state, which is caused by actions that deviate from statutory regulations or contain unlawful nature.
c. The issuance or payment of an amount of state money that results in the loss / disappearance of state money - caused by actions that violate the provisions of laws and regulations or are unlawful.
d. The issuance or use of an amount of state money that cannot be legally accounted for.
e. Expenditure that is partially or wholly greater than the state's financial burden caused by an act that violates the provisions of laws and regulations that is against the law.
f. Expenditure of state money that should not be a burden on the state finances due to acts that violate laws and regulations or are against the law.
g. The incurrence of state obligations that burden state finances as a result of actions or commitments that violate laws and regulations or are against the law..

h. The use of a certain amount of state money for things/purposes outside the appropriation of the money (unlawful) which does not contain any benefit at all for the institution and or for the public interest, or even if it contains benefits but the value of the benefits from its use is lower than the original value of benefits that should (actually) be for the appropriation of the money.
i. The use of a sum of state money for matters/purposes outside the appropriation for the money (unlawful) which results in non-payment or non-implementation/ neglect of the original legal obligations that burden the state finances.
j. The use of state money for matters/purposes outside the appropriation for the money (unlawful) that do not contain the benefits or uses as originally intended for the money, causing the original purpose for the money not to be achieved.
k. The issuance/use of state money for certain purposes (e.g. payment of the price of goods or services) whose value of benefit or result (goal) is below or lower than the value of the result or benefit that should be from the use of the state money by an act that contains the nature of unlawful (wederrechtelijk).

State financial losses are all expenditures or uses that become a burden on state finances where the expenditure or use of state money is based on unlawful acts and reduced income or income to state finances, where it occurs due to unlawful acts, all forms of state financial losses must be caused by acts that contain the nature of criminal law (wederrechtelijk), not caused by acts that contain the nature of civil law and state administrative law. The formulation of criminal threats as stipulated in Book I of the Criminal Code (KUHP) refers to the norm of punishment based on the formulation of Article 10 of the Criminal Code, namely:

1. Principal punishment:
2. death penalty;
3. imprisonment
4. imprisonment
5. fine;
6. exile.
7. 7.Additional punishment:
8. deprivation of certain rights;
9. forfeiture of certain goods;
10. announcement of the judge's decision

Meanwhile, the Law on the Eradication of the Criminal Act of Corruption provides additions related to additional punishment as stipulated in the provisions of Article 18 of the Law on the Eradication of the Criminal Act of Corruption, namely in the form of Paragraph (1) In addition to the additional punishment as referred to in the Criminal Code, as additional punishment are:

1) forfeiture of tangible or intangible movable property or immovable property used for or derived from the corruption offence, including companies owned by the convicted person in which the corruption offence was committed, as well as of property replacing such property;
2) payment of restitution in an amount at most equal to the property acquired by the corruption offence;
3) closure of all or part of the company for a maximum period of 1 (one) year;
4) revocation of all or part of certain rights or removal of all or part of certain benefits, which have been or may be granted by the Government to the convicted person.

(2) If the convicted person does not pay the restitution as referred to in paragraph (1) letter b at the latest within 1 (one) month after the court decision which has obtained permanent legal force, then his/her assets may be confiscated by the prosecutor and auctioned to cover the restitution. (3) In the event that the convicted person does not have sufficient assets to pay the restitution as referred to in paragraph (1) subparagraph b, the convicted person shall be punished with imprisonment which shall not exceed the maximum punishment of the principal punishment in accordance with the provisions of this Act and the length of such punishment has been determined in the court decision.

The regulation of the norm of additional punishment in the form of payment of restitution as stipulated in Article 18 of the Law on the Eradication of Corruption is a shift in the political direction of the law on the eradication of corruption, the eradication of corruption is no longer oriented towards the imposition of imprisonment alone on the perpetrators of corruption, but has shifted towards the recovery of state finances as the main goal, in addition to the imprisonment of the perpetrators of corruption. The norm of punishment in the form of restitution payment as a means to achieve the goal of restoring state financial losses caused by corruption crimes, the formulation of Article 18, regulates that the additional punishment in the form of restitution payment is determined that the maximum amount is equal to the property obtained from corruption crimes. The imposition of additional punishment in the form of payment of restitution, based on the provisions of Article 17 of the Law on Eradication of Corruption, can not only be applied to corruption offences in Article 2 and Article 3 of the Law

on Eradication of Corruption, but can also be applied to corruption offences regulated in Article 5 to Article 14.

The provisions of Article 17 and Article 18 of the Law on the Eradication of the Crime of Corruption, the imposition of restitution payments is not only specific to Articles 2 and 3, which in both articles contain the formulation of the elements of "enriching or benefiting" and "causing losses to state finances or the state economy", However, it can also be imposed on corruption offences in Articles 5 to 14 which do not contain the elements of "enriching or benefiting" and "causing losses to state finances or the state economy", as long as the corruption offence is committed within the scope of state finances or the state economy and results in losses to state finances or the state economy or the use of state finances or the loss of state revenue and income, then restitution payments can be imposed.

The regulation of witnesses of additional punishment in the form of restitution payment by the Supreme Court of Indonesia then issued Supreme Court Regulation Number 5 Year 2014 on Additional Penalty for Restitution in Corruption Crimes, the consideration part, letters d and e explain that this Supreme Court Regulation is a guideline in determining the amount of imprisonment in lieu of restitution, to anticipate the disparity in determining the maximum imprisonment in lieu of restitution, However, from the rules contained in the body of the Supreme Court Regulation, there are only 2 (two) articles that regulate substitute imprisonment, namely Article 8 and Article 10, while the rest are regulating the payment of the substitute money itself, the provisions of Article 8 only regulate the maximum limit in the imposition of substitute imprisonment, which must not exceed the punishment of the principal punishment proven.

Supreme Court Regulation Number 5 Year 2014 on Additional Penalty of Money in Lieu of Corruption, Article 1 stipulates: In terms of determining the amount of payment of restitution in corruption offences, the maximum amount is equal to the property obtained from corruption offences and not merely the amount of state financial losses caused and Article 3 regulates: additional punishment of restitution can be imposed on all corruption offences regulated in Chapter II of Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Eradication of Corruption, while taking into account the formulation of Article 1 above, this regulation reaffirms the provisions of Article 17 and Article 18 of the Law on Eradication of Corruption.

Supreme Court Regulation No. 5 of 2014 cannot be interpreted as narrowing the provision of restitution as stipulated in Article 18 of the Law on the Eradication of the Crime of Corruption, the determination of the amount paid in the imposition of additional punishment

in the form of restitution cannot be equated with the amount of state financial losses or the state economy, the imposition of restitution payments both under the provisions of Article 18 of the Law on the Eradication of the Crime of Corruption and the provisions of Article 1 of Supreme Court Regulation No. 5 of 2014, both emphasise the amount of property obtained by the perpetrator (defendant) of the crime of corruption for the crime of corruption committed.

The regulation on additional punishment in the form of imposition of restitution is a provision that accommodates recovery efforts for the occurrence of state financial losses caused by corruption crimes, but it must be understood that the amount of restitution imposed on the perpetrators of corruption crimes cannot be charged with the amount of state financial losses arising from corruption crimes committed by the perpetrators, because it is possible that the acquisition of property by the perpetrators of corruption crimes is not equal to the amount of state financial losses caused by the acts of corruption committed, for example the amount of state financial losses caused by corruption crimes is Rp10. 000,000.00 (ten million rupiah), but the acquisition of property by the perpetrator is Rp5,000,000.00 (five million rupiah), then the restitution imposed on the perpetrator (defendant) is Rp5,000,000.00 (five million rupiah).

To the other party, no prosecution is carried out, it cannot be interpreted that only the other party is not being prosecuted, even though no prosecution is being carried out, but in the process of examining the trial against the perpetrator (defendant), it is found that the other party has committed an act against criminal law (wederrechtelijk) either participating or assisting the perpetrator of the crime of corruption, Thus, the imposition of restitution to the perpetrator (defendant) for the property that has been transferred to another party can be done as long as the other party does not commit an act against the criminal law (wederrechtelijk) together with the perpetrator (defendant) either participating or assisting in the criminal act of corruption.

Based on this description, the imposition of additional punishment in the form of restitution cannot necessarily be charged to the perpetrators of corruption, if the amount of state losses is not enjoyed or not obtained by the perpetrators of corruption or not transferred by the perpetrators to other parties, then automatically the imposition of restitution as an effort to recover state financial losses cannot be charged to the perpetrators of corruption, to maximise recovery efforts for state financial losses, law enforcement carried out by law enforcement officials in the eradication of corruption crimes does not stop at the imposition of prison sanctions on the main perpetrators, law enforcement must be carried out up to those who receive the flow of state financial losses with the requirement that there is an act against criminal law (wederrechtelijk) and the fulfilment of the provisions of Article 55 or Article 65 of the Criminal Code with the main perpetrators of corruption crimes.

The imposition of a verdict on the imposition of restitution payment is an additional punishment as an effort to recover or restore state financial losses embodied by the judge in his decision, the recovery of state financial losses will not be realised without being proportionally matched with the length of substitute imprisonment, for example the perpetrator is charged with restitution payment of Rp10,000. 000.00 (ten million rupiah) with a substitute imprisonment of 1 (one) month, of course the perpetrator (convict) will prefer to undergo imprisonment for 1 (one) month compared to making a substitute payment of Rp10,000,000.00 (ten million rupiah), in this case recovery of state financial losses will not be realised, so that recovery of state financial losses can be realised in law enforcement to eradicate non-corruption, the judge in the decision to impose a substitute imprisonment must be proportional (comparable or balanced) with the amount of property obtained from non-corruption (substitute money).

Therefore, the regulation of the imposition of substitute punishment in proportion to the amount of property obtained from the crime of corruption, adopting the rule model of Supreme Court Regulation No. 1 of 2020 concerning Sentencing Guidelines Article 2 and Article 3 of the Law on the Eradication of Corruption, the imposition of substitute imprisonment can be carried out with the following mechanisms:

1. Acquisition of property from corruption offences (restitution) up to IDR 300,000,000.00 (three hundred million rupiah) with substitute imprisonment for 1 (one) year to 4 (four) years.
2. Acquisition of property from corruption offences (restitution) of more than Rp300,000,000,000.00 (three hundred million rupiah) up to Rp1,000,000,000,000.00 (one billion rupiah) with substitute imprisonment for 4 (four) years up to 8 (eight) years.
3. Acquisition of property from corruption offences (restitution) of more than Rp1,000,000,000.00 (one billion rupiah) up to Rp25,000,000,000.00 (twenty billion rupiah) with substitute imprisonment for 8 (eight) years up to 12 (twelve) years.
4. Acquisition of property from the crime of corruption (restitution) of more than Rp25,000,000,000.00 (twenty billion rupiah) up to Rp100,000,000,000.00 (one hundred billion rupiah) with substitute imprisonment for 12 (twelve) years up to 16 (sixteen) years.
5. Acquisition of property from corruption offences (compensation money) of more than Rp100,000,000,000.00 (one hundred billion rupiah) with substitute imprisonment of 16 (sixteen) years to 20 (twenty) years.

So that the legality of restitution and the consideration of judges in determining additional punishment in the form of restitution, especially corruption, is that the legality of additional punishment in the form of restitution in corruption cases lies in Article 18 of Law No. 31 of 1999 concerning Eradication of the Crime of Corruption which has been improved by Law No. 20 of 2001 concerning Amendments to Law No. 31 of 1999 concerning Eradication of the Crime of Corruption. As for the benchmarks regarding the determination are contained in Article 18 paragraph (1) letter b. which reads "payment of restitution as much as the same as the property obtained from the crime of corruption". Regarding the definition of state financial losses, which is one of the important elements in the article regulating the crime of corruption, it can be concluded in the form of, "the reduction of state assets or the increase in state obligations without being balanced with achievements caused by 'unlawful' acts".

4. CONCLUSIONS

Corruption that results in state financial losses in the concept of eradicating corruption is all expenditures or uses that become a burden on state finances where the expenditure or use of state money is based on unlawful acts, including reduced income or income to state finances based on unlawful acts, unlawful acts that result in state financial losses must be caused by acts that contain the nature of criminal law (wederrechtelijk). The imposition of restitution payments in the eradication of corruption as stipulated in Article 18 of the Law on the Eradication of Corruption is a means that can be applied to realise recovery efforts or recovery of state finances caused by corruption, The payment of restitution is imposed on the perpetrator of the crime of corruption in the amount of property obtained from the crime of corruption and the amount of property that has been transferred by the perpetrator to another party where the other party is not prosecuted and does not commit an act against criminal law (wederrechtelijk), either by participating or assisting in the act and specifically regarding the imposition of restitution sanctions must be carried out in proportion to the acquisition of property from the crime of corruption or the amount of restitution imposed.

5. ADVICE

The laws and regulations regarding corruption, especially regarding corporations and the imposition of criminal sanctions, should be strengthened so that in giving or imposing a verdict the judge is more focused on the rules in the law governing criminal sanctions against corporations involved in corruption cases. and it is recommended that judges increase their understanding of the burden of proof in cases of corruption

committed by a corporation. Of course, we must continue to pay attention to and criticise government policies, especially in the field of law relating to criminal acts of corruption.

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