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JURIDICAL OVERVIEW OF MISAPPROPRIATION OF MEDICAL DEVICES PROCUREMENT BUDGET BY HOSPITALS

Leti Ratna Kusumawati[1], Zudan Arief Fakrulloh[2], Evita Isretno Israhadi[3]
Universitas Borobudur
E-mail: leticya_cute@yahoo.com[1], cclsis@yahoo.com[2],
evita_isretno@borobudur.ac.id[3]

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ABSTRACT

The existence of corruption in Indonesia is alarming, the increase in corruption cases has brought misery to the community so its existence must be eradicated. The Corruption Eradication Commission as the institution for eradicating corruption in Indonesia must be responsive and participate in supervising every activity related to budgeting for state needs, to ensure the actual realization of budgeting. Based on the Decree of the Head of the Madiun District Health Office Number: 188.45/1464/KPTS/402.102/2011, the judge considered that the actions taken by the defendant fulfilled all the elements of Article 3 of Law Number 31 of 1999 concerning the Eradication of Corruption Crimes in conjunction with Article 55 paragraph (1) item 1 of the Criminal Code (KUHP). Even though the Public Prosecutor charged the defendant with Article 2 of Law Number 20 of 2001, the Judge considered that the Public Prosecutor could not prove the "unlawful" element of what the defendant did. Therefore, based on facts and analogies, the Judge judged that Article 3 was appropriate to be applied. The application of criminal sanctions against people as perpetrators of criminal acts of corruption is what has been regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. However, the formulation of sanctions in several articles in Law Number 20 of 2001 contradicted the general provisions regarding sanctions regulated in the Criminal Code (KUHP).

Keywords: *Procurement of Goods and Services; Hospital; Corruption.*

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INTRODUCTION

Corruption in Indonesia today is a position that is very worrying about the lives of the people, nation, and state, this is evident from the various problems that are being faced by developing countries, including Indonesia as one of the most corrupt countries in the world (Handoyo, 2014). Corruption is so rooted in every aspect of life. The development of corrupt practices from year to year is increasing,

both in the legislative, judicial, executive, and political circles. The increase in uncontrolled corruption will have a negative impact not only on the country's economy and state's financial losses but also on the life of the nation and state in general.

Corruption is an extraordinary crime, as well as efforts to eradicate it can no longer be carried out normally, but are prosecuted in an extraordinary way that is carried out specifically,(Danil, 2021) in addition, efforts to prevent and eradicate corruption need continuous and continuous efforts and needs to be supported by various resources, both human resources and other resources such as increasing institutional capacity and increasing law enforcement to raise public awareness and attitudes that are anti-corruption (Syamsuddin, 2011).

Corruption crime is regulated in Law No. 31 of 1999 concerning the eradication of criminal acts of corruption, and the article on corruption is regulated in Law No. 31 of 1999 which has been amended by Law No. 20 of 2001 classifying into 7 (seven) groups of types of corruption (Wiyono, 2006).

The crime of corruption that was carried out jointly in the case under study was formulated in a special criminal regulation (lex specialis), namely Law No. 31 of 1999 which was amended by Law No. 30 of 1999 concerning the eradication of criminal acts in conjunction with Law No. 20 2001 concerning amendments to Law No. 31 of 1999. The corruption case in Case No: 8/Pid.Sus-Tpk/2019/PT PBR was carried out by several actors who were carried out together in the procurement of medical devices.

Participation is regulated in the Criminal Code, namely "article 55 paragraphs 1 number 1 which reads:

“Criminalized as a crime: 1. Those who commit, who ordered to do, and who participated in doing it; 2. Those who by giving or promising something, by abusing their power or dignity, by force, by threat or misdirection, or by providing opportunities, means or information, and by encouraging others to take action (Criminal Law, article 55)”

Acts of corruption that are carried out together have a very thin difference from the crime of embezzlement that is carried out jointly where these two crimes are carried out together and both want to own and take rights that do not belong to them.

Corruption is an extraordinary crime (extraordinary crime) because the modes, techniques, and actors are very organized and systematic, as well as the massive impact it causes, so extraordinary and special ways are needed in handling and eradicating them, namely: (Ifrani, 2018)

1. The establishment of the Corruption Eradication Commission (KPK), which functions as an independent institution and is free from the influence of powers that have special authority to deal with criminal acts of corruption.
2. Evidence in a criminal act of corruption applies a reversed proof system that is limited or balanced, namely that the defendant is given the right to prove and provide information about all personal or corporate assets that are suspected of originating from the proceeds of corruption as evidence that he has not committed a criminal act of corruption.

3. Specific minimum criminal threats, replacement money, and higher fines, as well as the death penalty which is a criminal offense.

Corruption crimes are also included in White Collar Crime (WCC) or white-collar crimes. The term white-collar crime was researched by Edwin Sutherland because people who are neatly dressed in suits and white collars are identified with people who have positions, so white-collar crimes are crimes committed by people who are considered respectable with high social status in the process of carrying out their positions. This white-collar crime has been regulated in Article 3 of Law Number 31 of 1999 concerning the Eradication of the Crime of Corruption, which defines the abuse of authority, opportunity, or means because of the position or position (Wibowo, 2020).

Corruption in the world of Health, especially the procurement of goods and services in the health sector now often occurs, so special handling is needed in monitoring the procurement of goods and services in the health sector.

Self-defense of corruptors can be seen as normal, as is the case when a corruptor who is convicted of corruption in the procurement of medical equipment (Akes) so far feels that he has not committed corruption. Ironically, the facts of corruption have been exposed in front of our eyes, but they still argue that what he did was an order from superiors through instructions that apply nationally, and therefore the argument for his defense according to his reasons cannot be blamed because he has justifications and excuses for the same reasons. Corruption in the procurement of medical devices (Alkes) is a series of corruption crimes that are considered covert corruption because the perpetrators defend themselves by saying they are carrying out the instructions of the Minister of Home Affairs so that the policies implemented are policies that are ordered according to applicable procedures. In this context, the perpetrators acknowledged that they had carried out the correct procedures based on the tender for the procurement of goods that were legal and had been carried out openly to the public and under the supervision of the relevant institutions.

The following are some examples of corruption cases in the procurement of goods and services in the health sector, among others: Central Jakarta District Court Decision Number: 040/PID.SUS/TPK/2017/PN.JKT.PST. who ensnared the former governor of Banten, RAC, was involved in a corruption case involving the procurement of medical equipment. Pekanbaru High Court with Case Number: 8/Pid.Sus-Tpk/2019/PT PBR for the determination of corruption in the procurement of goods and services in the health sector by the defendant dr. WELLY ZULFIKAR, SpB(K)KL as Civil Servant of Arifin Achmad Regional General Hospital, Riau Province.

RESEARCH METHOD

The type of research used is library research through collecting data from library materials from books, reviewing case documents, and court decisions related to this paper. In this study, the focus of the problem is the Juridical Review of the Procurement of Medical Devices in Takalar Regency referring to Law No. 20 of 2001 concerning criminal acts.

The types of data sources used in this study are:

a. Primary Legal Material

Primary legal materials were obtained from the decision of the Makassar District Court; materials related to the decision; the indictment of the Public Prosecutor; Public Prosecutor's Demands; Pledoi of the Legal Advisory Team; Jurisprudence-fixed jurisprudence

b. Secondary Legal Material

Secondary legal materials are data obtained from relevant legal books, literature, documents, and archives through library research.

RESULT AND DISCUSSION

A. Presidential Decree Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services

Berdasarkan Pasal 33 ayat (4) dan (5) Undang-Undang Dasar (UUD) Negara Republik Indonesia in 1945 which regulates the national economy, it is necessary to make legal arrangements regarding the procurement of goods and services. There are at least five reasons why the regulation on the procurement of goods and services has an important role in the administration of the state, namely: (Tandiono, 2021)

a. It is necessary to ensure that the procurement of goods and services by the government achieves the goal of obtaining goods and services at competitive prices with high quality. This arrangement serves as a guide for organizers who have the task of procuring goods and services.
b. There is a relatively uniform arrangement when various public agencies procure goods and services. Uniformity is needed to facilitate the process of procurement of goods and services and monitoring.
c. So that public agencies and providers of goods and services can know accurately the processes and procedures as well as various requirements in the procurement of goods and services by public agencies.
d. To prevent collusive and corrupt actions, including right and wrong procedures.
e. Can be a guide for the auditor to ensure that requirements, processes, and procedures have been followed.

Starting in 1973, Indonesia has had a legal regulation regarding the procurement of government goods/services, but it is still inserted as part of the Presidential Decree (Keppres) on guidelines for the implementation of the APBN, which almost every year is issued a new Presidential Decree (Keppres) for improvement. Finally, after 2000, Presidential Decree (Keppres) No. 18/2000 was issued which specifically regulates the procurement of government goods/services, and was later revoked by Presidential Decree (Keppres) No. 80/2003 which has been amended seven times, namely:[5]

a. Presidential Decree (Keppres) of the Republic of Indonesia Number 61 of 2004 concerning Amendments to Presidential Decree (Keppres) Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services.

b. Presidential Regulation (Perpres) of the Republic of Indonesia Number 32 of 2005 concerning the Second Amendment to Presidential Decree (Keppres) Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services.
c. Presidential Regulation (Perpres) of the Republic of Indonesia Number 70 of 2005 concerning the Third Amendment to Presidential Decree (Keppres) Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services.
d. Presidential Regulation (Perpres) of the Republic of Indonesia Number 8 of 2006 concerning the Fourth Amendment to Presidential Decree (Keppres) Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services.
e. Presidential Regulation (Perpres) of the Republic of Indonesia Number 79 of 2006 concerning the Fifth Amendment to Presidential Decree (Keppres) Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services.
f. Presidential Regulation (Perpres) of the Republic of Indonesia Number 85 of 2006 concerning the Sixth Amendment to Presidential Decree (Keppres) Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services.
g. Presidential Regulation (Perpres) of the Republic of Indonesia Number 95 of 2007 concerning the Seventh Amendment to Presidential Decree (Keppres) Number 80 of 2003 concerning Guidelines for the Implementation of Government Procurement of Goods/Services.

This Presidential Decree (Keppres) Number 80 of 2003 was later revoked through Presidential Regulation (Perpres) of the Republic of Indonesia Number 54 of 2010. Then the Presidential Regulation (Perpres) of the Republic of Indonesia Number 54 of 2010 was last amended by Presidential Regulation (Perpres) of the Republic of Indonesia Number 4 of 2015 concerning the Procurement of Government Goods/Services is revoked and declared no longer valid through Presidential Regulation (Perpres) of the Republic of Indonesia Number 16 of 2018 concerning Government Procurement of Goods/Services.

B. Provisions on Corruption Crimes According to Law Number 31 of 1999 concerning Eradication of Corruption Crimes Junction Law Number 20 of 2001

The provisions for criminal acts of corruption according to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption Juncto Law Number 20 of 2001 include 7 (seven) acts that are categorized as corruption offenses, namely: corruption related to state financial losses, corruption related to bribery, corruption related to embezzlement in office, corruption related to acts of extortion, corruption related to fraudulent acts, and corruption related to gratuities.

Criminal acts of corruption in the procurement of goods and services include: giving bribes/bribes, embezzlement, forgery, extortion, abuse of position or authority, conflict of interest/owning your own business, favoritism,

accepting commissions, and illegal contributions or donations. Corruption in the procurement of goods and services is contrary to the ethics, norms, and principles stated in Presidential Regulation number 16 of 2018 concerning the Procurement of Goods and Services (Arifin & Hartadi, 2020).

Basically, Law Number 20 of 2001 is not much different from Law Number 31 of 1999, and only adds the formulation of a few articles. For example, Article 5, Article 6, Article 7, Article 8, Article 9, Article 10, Article 11, and Article 12 of Law Number 31 of 1999 only refer to the articles in the Criminal Code, so that in Number 20 of 2001 directly mentions the elements contained in each Article of the Criminal Code that is referred to.

The regulation of criminal sanctions against perpetrators of corruption as regulated in Law Number 31 of 1999 as amended by Law Number 20 of 2001 is divided into several types of corruption. Among them are as follows: (Ali, 2002)

a. Corruption crime is detrimental to state finances;

   Included in this group of criminal acts, namely, the criminal act of corruption harming the state's finances against the law, and the criminal act of corruption abusing the authority, opportunities, or facilities available to him because of his position or position. This is regulated in Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001.

b. Active bribery corruption;

   This type of criminal act of active bribery is regulated in Article 5 paragraph (1) letter b, Article 6 paragraph (1) letters a and b, and Article 13 of Law Number 20 of 2001. In the three articles, a distinction is made between criminal acts of corruption in terms of giving bribes. to civil servants or state administrators, corruption in giving bribes to judges or advocates, and corruption in giving gifts or promises to civil servants.

c. Corruption crime of passive bribery or accepting bribes;

   This type of criminal act of corruption is divided into criminal acts of corruption in terms of accepting bribes by civil servants or state officials, and criminal acts of corruption in terms of accepting bribes by judges or advocates. This can be found in the formulation of Article 5 paragraph (2), Article 11, and Article 12 letters a, b, and c of Law Number 20 of 2001.

d. Corruption crime of embezzlement in office;

   Corruption crimes of embezzlement in the office are grouped into corruption crimes of embezzlement of money or securities due to position, corruption crimes of falsifying books or special lists for administrative examination, and corruption crimes of embezzling or destroying evidence.

e. Corruption crime of extortion;

   The types of corruption crimes of extortion are grouped into criminal acts of corruption forcing other people to submit or do something, criminal acts of corruption make civil servants or other state officials seem to have debts to the perpetrators, and criminal acts of corruption make other people outside civil servants and other state employees. as if you have debt

f. Criminal acts of corruption, fraudulent acts;

Types of criminal acts of corruption, and fraudulent acts are grouped into criminal acts of corruption, fraudulent acts in contracting, suppliers, and partners; Corruption crime of cheating on land; and Corruption crime of fraudulent acts in terms of procurement of goods and services. Perpetrators of fraudulent acts of corruption are threatened with different criminal sanctions for each type of corruption committed.

g. Criminal acts of corruption receive gratuities;

Criminal acts of corruption in terms of receiving gratuities are distinguished based on the amount of value received. In this case, it is distinguished between receiving a gratuity worth ten million rupiahs or more and receiving a gratuity worth less than ten million rupiahs. The grouping of gratuities based on the amount of value received affects the criminal sanctions that can be imposed on the perpetrator.

h. Corruption crime outside the Anti-Corruption Law; and

Corruption crime outside the Anti-Corruption Law includes every act or act of violating the provisions of the Act as a corruption crime. This is regulated in Article 14 of Law Number 20 of 2001. This means that the Law opens up the possibility of additional types of corruption in the future.

i. Other crimes related to corruption.

Sanctions if previously there has been a criminal act of corruption. Other types of criminal acts related to corruption are grouped into acts of obstructing the process of examining corruption cases, not giving information or providing false information, violating several provisions of the Criminal Code in corruption cases, and witnesses revealing the identity of the reporter.

Law Number 31 of 1999 Article 21 states that for corruption crimes that have been carried out by the defendant, the perpetrator is threatened with imprisonment for a minimum of 3 years and a maximum of 12 years, and a fine of at least Rp. 50,000,000 and a maximum of Rp. 600,000,000.

The four things mentioned above cannot stand alone because they are related to the criminal acts of corruption that have been committed. In terms of obstructing the process of examining corruption cases, the perpetrators are threatened with imprisonment for a minimum of three years and a maximum of twelve years, as well as a minimum fine of one hundred and fifty million rupiahs and a maximum of six hundred million rupiahs.

In the case of a witness revealing the identity of the reporter, the perpetrator may be sentenced to a maximum imprisonment of three years, and a maximum fine of one hundred and fifty million rupiahs. This relates to the protection of whistleblowers as regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. This is applied in investigations and examinations in court (Rachman, 2018).

Based on the description above related to the regulation of criminal sanctions against perpetrators of corruption, it can be seen that the scope of corruption is quite broad (Arifin & Hartadi, 2020). Legislation, especially Law Number 20 of 2001, has accommodated criminal sanctions for any perpetrators

of corruption committed by civil servants or state administrators, law enforcers, and anyone in their position who is detrimental to state finances.

Ironically, several criminal sanctions regulated in Law Number 20 of 2001 give the impression of being more profitable for civil servants or state administrators, compared to other perpetrators of corruption.

The following is an example of a corruption case in the procurement of goods and services that occurred in a hospital in the city of Madiun according to the Decree of the Head of the Madiun District Health Office Number: 188.45/1464/KPTS/402.102/2011 dated August 24, 2011. The Planning Team proposed medical devices/ health services needed by the Dolopo Hospital.

The procurement of medical equipment at the Dolopo Hospital in 2011 was carried out utilizing a public auction which was carried out by the Procurement Committee with the Decree of the Head of the Madiun District Health Office. In the auction, the company "Andalanku" led by Dwi Enggo Tjahyono was among the 5 participants who submitted bids with the lowest bid value of Rp.4,450,017,000. The results of the public auction are concluded and determined by the Procurement Committee of the potential winners, namely the "Andalanku" company.

The "Andalanku" company has known from the start that the price from the distributor is far below HPS, and will receive a discount of up to 45% from the distributor. After being determined as the winner, then a letter of agreement/contract is signed with a contract value of Rp. 4,450,017,000, - (four billion four hundred fifty million and seventeen thousand rupiah).

To realize the agreement/contract, the company “Andalanku” ordered 22 types of medical devices from distributors with a total purchase price of Rp. 2,438,169,370. On December 6, 2011, and December 28, 2011, Dwi Enggo Tjahyono handed over the medical equipment mentioned above to the Technical Control Officer for Procurement of Medical Devices (PPTK) in 2011 at RSUD Dolopo at the District Health Office Madiun, and at the same time a payment was made to the company “Andalanku”.

After checking the 22 items of medical devices, it was found that 8 medical devices were not accompanied by the original certificate of origin (COO) from the manufacturer/principal, and 5 medical devices did not meet the specifications as stated in the Agreement/Contract.

The Public Prosecutor demanded:

1. The defendant Dwi Enggo Tjahyono, SH. guilty of committing a criminal act of corruption as regulated and subject to criminal sanctions in Article 2 paragraph (1) in conjunction with Article 18 of Law Number 31 of 1999, as amended and supplemented by Law Number 20 of 2001 in conjunction with Article 55 Paragraph (1) the 1st the Criminal Code (KUHP) as stated in the Primary indictment;
2. Sentencing Defendant Dwi Enggo Tjahyono, SH. in the form of imprisonment for 8 (eight) years reduced while the Defendant is in custody and added with a fine of Rp. 200,000,000, - (two hundred million rupiahs) Subsidiary for 6 (six) months in prison;

3. Determined the defendant Dwi Enggo Tjahyono, SH. pay compensation in the amount of Rp.1,056,528,000, - (one billion fifty-six million five hundred twenty-eight thousand rupiah) if the defendant does not pay the compensation any later than 1 (one) month after the court's decision which has permanent legal force, then his property can be confiscated and auctioned to cover the replacement money. If the defendant does not have sufficient assets to pay the replacement money, he will be sentenced to imprisonment for 4 (four) years;

Law Number 20 of 2001, the Criminal Code, and other laws and regulations, the Judge decided:

1. To declare that the defendant Dwi Enggo Tjahyono, SH., has not been legally and convincingly proven guilty of committing a crime as stated in the Primary Indictment;
2. Release the defendant from the Primary Indictment;
3. To declare that Defendant Dwi Enggo Tjahyono, SH., has been legally and convincingly proven guilty of committing a criminal act of corruption together as stated in the subsidiary indictment;
4. Sentencing the Defendant therefore with imprisonment for 2 (two) years and a fine of Rp. 50,000,000.- (fifty million rupiahs) provided that if the fine is not paid, the Defendant is subject to imprisonment for a month;
5. Punishing the Defendant to pay a replacement fee of Rp. 745.938.000,- (seven hundred and forty-five million nine hundred thirty-eight thousand rupiahs) as compensation for state losses provided that if the convict does not pay the compensation for 1 (one) month after the Court's Decision which has permanent legal force, his assets can be confiscated by the Prosecutor and auctioned off to cover the replacement money. And if the convict does not have sufficient property to pay the replacement money, he is sentenced to imprisonment for (six) months;
6. Determine the period of detention that has been served by the defendant, deducted entirely from the sentence imposed;
7. Order the accused to remain in custody.

When associated with concepts and theories regarding the application of law in the context of a civil law system that applies legal findings or law findings by judges, judges have the right to decide a case through interpretation or analogy. To arrive at the application of the law – legal findings, it begins with an assessment or judge's consideration of the reality after examining the case, then an assessment of the legality of the case, and after that the decision or dictum.

Its application in the case example above, the judge's decision begins with an assessment of the facts found in Court. The judge considered that the facts obtained from the chronology of events accompanied by valid evidence, the defendant was proven to have jointly committed a criminal act of corruption ranging from planning for the procurement of medical/medical equipment to the disbursement of project funds that were not by the work contract or that had been mutually agreed.

Next, an assessment of the legality of the case. Based on the legal facts at the Court, the Judge considered that the actions taken by the defendant fulfilled

all the elements of Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) point 1 of the Criminal Code (KUHP). Even though the Public Prosecutor charged the defendant with Article 2 of Law Number 20 of 2001, the Judge considered that the Public Prosecutor could not prove the "unlawful" element of what the defendant did. Therefore, based on facts and analogies, the Judge reckoned that Article 3 was appropriate to be applied.

The application of criminal sanctions against people as perpetrators of criminal acts of corruption is what has been regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. However, the formulation of sanctions in several articles in Law Number 20 of 2001 contradicted the general provisions regarding sanctions regulated in the Criminal Code (KUHP).

The Criminal Code stipulates that a crime committed because of one's position and violates authority is a criminal offense. On the other hand, Article 3 of Law Number 20 of 2001 which regulates acts of abuse of authority, opportunity, or facilities available to him because of his position or position, is subject to a lighter sentence than what is stipulated in Article 2 of Law Number 20 of 2001.

CONCLUSION

Corruption in the world of Health, especially the procurement of goods and services in the health sector now often occurs, so special handling is needed in monitoring the procurement of goods and services in the health sector. The procurement of hospital equipment is contained in Presidential Decree (Keppres) No. 18 of 2000 which specifically regulates the procurement of government goods/services.

Based on the example above, the judge considered that the actions taken by the defendant fulfilled all the elements of Article 3 of Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption in conjunction with Article 55 paragraph (1) item 1 of the Criminal Code (KUHP). Even though the Public Prosecutor charged the defendant with Article 2 of Law Number 20 of 2001, the Judge considered that the Public Prosecutor could not prove the "unlawful" element of what the defendant did. Therefore, based on facts and analogies, the Judge judged that Article 3 was appropriate to be applied.

The application of criminal sanctions against people as perpetrators of criminal acts of corruption is under what has been regulated in Law Number 31 of 1999 in conjunction with Law Number 20 of 2001. However, the formulation of sanctions in several articles in Law Number 20 of 2001 contradicted the general provisions regarding sanctions regulated in the Criminal Code (KUHP).

The Criminal Code stipulates that a crime committed because of one's position and violates authority is a criminal offense. On the other hand, Article 3 of Law Number 20 of 2001 which regulates acts of abuse of authority, opportunity, or facilities available to him because of his position or position, is subject to a lighter sentence than what is stipulated in Article 2 of Law Number 20 of 2001.

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