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LEGAL CONSTRUCT OF VILLAGE-OWNED SPRINGS MANAGEMENT AS A VILLAGE GOVERNMENT ASSET

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Abstract

This study aims to develop the management provisions of the springs in the Law on Water Resources. This study uses secondary data in the form of books, journals, or other legal materials. Data and information gathered were analysed. The result of the research is to build the concept of prohibition in the context of sustainable asset management based on the Villages' Sustainable Development Goals (SDGs Desa). One of the pillars of SDGs is Clean Water and Sanitation for Villages. Based on the research, the prevalence of water attractions that utilize springs creates new challenges in managing assets. One of the objectives of village-owned springs management for residents is to get clean water that is decent and can be consumed. The results of this study mainly recommend the government to formulate a policy to separate the springs from the tourist attractions. With these considerations, it is necessary to arrange regulations and provide legal certainty for central government, village government, management of water attractions, the private sector, and the society, as well as develop an incentive system for tourist attractions managers to separate the springs from tourist attraction area. tour. The results of this study can be used as references to analyse in formulating policies on springs' management to obtain decent clean water, that can be consumed for the community and is sustainable.

Keywords: springs, water attractions, Village properties, Village Assets utilization

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INTRODUCTION

Earth, water, and natural resources are controlled by the state and be used for the greatest prosperity of the society as mandated by Article 33 paragraph 3 of the 1945 Constitution. However, recently, we are facing the phenomenon of the global economic trend which is capitalistic liberal, namely through the privatization of water resources management including springs.

Springs are assets controlled by the state. Springs are not an idle asset but pose a significant problem, their presence can be identified and mapped by the central government, local governments, and village governments (Puspitarini and Akhmadi, 2019).

Recently, springs or any other water sources are commonly utilized for profit-oriented purposes. As a consequence, the surrounding society is having difficulties in accessing decent clean water to fulfil their basic needs. Society's need for clean water is not only to fulfil their basic needs such as drinking and personal hygiene but also for supporting their productive activities such as crop irrigation, milking, brick making, ice cube making, building construction, and so on (Mokgope & Butterworth, 2001 in Bhawana Upadhyay, 2005).

Conflicts between the community and right-to-manage holders also occur in rural communities. With the existence of Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation, there is an increase in horizontal conflicts between village communities and Business Entities that manage tourist attractions. In addition, there are challenges between local governments and village governments regarding the management of these springs, considering that clean water is a basic human need.

The first challenge is the disharmony of regulations between Article 1 paragraph 2 and Article 2 paragraph 1 of the Law -Law Number 5 of 1960 concerning Agrarian Principles (UU P Principles of Agrarian Affairs) with Article 76 paragraph (1) in Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation. Article 1 paragraph 2 of the Basic Agrarian Law states that the entire earth, water, and space, including the natural resources within the territory of the Republic of Indonesia, is a gift from God Almighty are the earth, water, and space of the Indonesian nation and constitute national wealth. This means that national wealth can only be controlled by the highest organization, namely the state. Then Article 2 paragraph 1 states that based on the provisions in Article 33 paragraph (3) of the Constitution and the matters referred to in Article 1, the earth, water, and space, including the natural resources contained therein are at the highest level. controlled by the State, as an organization of power for all the people.

However, Article 76 paragraph (1) in Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation states that Village Assets can be in the form of Village treasury land, *ulayat* land, village market, animal market, boat moorings, Village buildings, fish

auctions, auctions of agricultural products, Village-owned forests, Village-owned springs, public baths, and other assets belonging to the Village. Village-owned springs should be controlled by the state, not government organizations in the form of village governments to own them. The village government only has the right to control, not to own. Thus, it is very clear that there is disharmony in the normative adjustment of Article 76 paragraph (1) in Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation in the form of Village Assets, which can be in the form of springs belonging to the Village.

Secondly, there is the implementation of regulations that have not been in line. The implementation of the regulations faces 2 challenges, which are internal factors and external factors. The challenges of internal factors include the decreasing number of springs or even disappearing, the limited number of rainwater catchment areas, and the limited number of plants that can absorb water. Forest water catchment is increasingly limited due to changes in land use. The change in function, which was originally a rainwater catchment, became a tourist area and permanent buildings were built in the form of hotels, villas, and inns. This is due to the high need for tourist attractions and changes in human behaviour for travel/*healing*.

Meanwhile, the external factor is the dispute between the village community's access rights and the springs is very limited. Most of the village-owned springs are managed by business entities, whether village-owned enterprises or private enterprises. In addition to this, increasing tourist attractions in the form of reservoirs, the threat of drought due to *climate change*, increasing demand for clean water due to an increase in population, and poor environmental management.

Therefore, the authors are interested in discussing the formulation of the problem as follows:

1. How does the implementation of the management of springs in the village as a village government asset?
2. How to formulate an ideal legal norm related to village-owned springs in the Village Law?

LITERATURE BACKGROUND

A. Cybernetic Theory according to Talcot Parson and Progressive Law

Village Governments who work through the Village Head are not allowed to implement explicit written regulations in the form of right or wrong, this is like an automatic machine of laws and procedures, but according to the spirit and deeper meaning of the law or law in a broad sense. The village head is not only intellectually intelligent but also spiritually intelligent. In other words, the village head is carried out with full determination, empathy, dedication, and commitment

to the suffering of the village community and accompanied by the courage to find other ways than what is usually done (Satjipto Rahardjo, 2009).

The village government must exercise the authority, power, and obligation both from higher regulations and from the right of recognition while still providing a sense of justice for the village community. If the village government cannot carry out its functions properly, and correctly and causes injustice, it can cause damage to the lives of rural communities, considering that rural communities will tend to seek justice with *people's power*. However, in entering a comprehensive understanding of justice as a legal basis, including the law for managing village-owned springs.

Legality and legal legitimacy in responsive spring management must be able to explain the relationship between law and areas of social life in rural communities (Philippe Nonet, 2010) which according to Talcot Parson cannot be separated from individual actions as a meaningful behavior that is always placed in a certain social relation (Talcot Parson, 1951) which are limited by the physical and ideal environment (Satjipto Rahardjo, 2009).

In this framework, Parsons' cybernetic concept of social systems is known, which presupposes the existence of a mechanism for the continuity of social systems in rural communities. The strategy carried out by each village community needs to carry out socialization of its social system, which aims to integrate personal systems and cultural systems into the social system. In this case, the cultural system becomes the basis of the social system, then the social system becomes the basis of the individual, and then the individual system becomes the basis of the system of biological organisms (IB Wirawan, 2012). In line with this concept of cybernetics, Nasikun also suggests that the basic assumptions underlying Talcott Parsons' thinking are: (1) society should be seen as a system rather than interrelated parts; (2) the influencing relationship between the parts is dual and reciprocal; (3) although social integration can never be achieved perfectly, fundamentally the social system always tends to move towards a dynamic equilibrium in response to changes that come from outside; (4) even though dysfunction, tension, and deviation always occur, but in the long term these conditions will eventually be resolved by themselves through adjustments and the process of institutionalization. In other words, even though social integration at its perfect level will never be achieved, every social system will always proceed in that direction; (5) changes in the social system generally occur gradually, through adjustments and processes of institutionalization; (6) basically, social change arises and occurs through three kinds of possibilities: adjustments made by the social system to changes that come from outside (*extra systemic change*), growth through a process of structural and functional differentiation; and discoveries by community members; and (7) the most important factor that has the power to integrate a social system is the consensus

among community members regarding certain societal values (IB Wirawan, 2012).

Justice in the law of managing village-owned springs must reach the continuity of the social system in the communities involved in it, such as the government (central and local), farmers, households, business entities, and related stakeholders, so that the law, as a universal phenomenon but manifests itself in various ways, should be constantly structured or negotiated within a particular socio-cultural context, and thus inherently dynamic and flexible (Werner Menski, 2006). The law for the management of village-owned springs, which is inherently dynamic and flexible, is the embodiment of the state, society, and morality/ethics, as illustrated by Werner Menski in Figure 1.

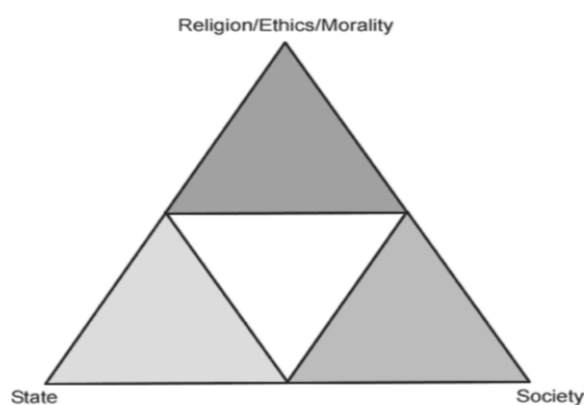


Figure 1: A Model of Legal Understanding Focusing on Plurality according to Werner Menski

The diversity of stakeholders involved in managing village-owned springs in Indonesia shows that justice-based law strongly opposes the dominance of legal centralism which has been considered to have underestimated the potential for the coexistence of various regulatory systems whose sources of law are non-state including morals/ethics, and especially rural communities and cultural elements (Werner Menski, 2006)

Progressive law is one way to build policies that are just for rural communities. According to Satjipto Rahardjo, to achieve legal goals as much as possible is built on the ability of reason and human understanding, and the concept of progress depends on human conscience and moral values of justice (Deni Nuryadi, 2016).

B. Previous Research

No.	Author Name	Theme	Differences With This Research
1.	Josina Augusthina Yvonne Wattimena	Fulfillment of the Right to Clean and Healthy Water, and the Right	The community are human rights. contains a health dimension but also an environmental dimension, which is essentially a human right
2.	Siswadi, Tukiman Taruna, Hartuti Purnaweni	Local Wisdom in Preserving Springs (Case Study in Purwogondo Village, Boja District, Kendal Regency)	A study conducted by Siswadi, Tukiman Taruna, Hartuti Purnaweni put more emphasis on local wisdom in environmental management
3	Sudarmadji, Darmakusuma Darmanto, Margaretha Widyastuti, and Sri Lestari	Spring Management for Sustainability Domestic Water Supply in the South West of Merapi Volcano Slope)	to study the management of springs based on appropriate technology for household water supply on the southern slopes of Merapi Volcano. The research was conducted by surveying and observing the field on springs used for household water supply

RESEARCH METHOD

The research method used is qualitative research. Approach method that is juridical-normative. This method is to see the reality on the ground by explaining the provisions in the legislation, then further analysing by comparing the demands of the ideal values that exist in the state constitution with the reality in Indonesia. This study uses one of the paradigms proposed by Egon G. Guba and Yvonna S. Lincoln, namely the constructivism paradigm (Erlyn Indarti, 2010 and Guba, EG, & Lincoln, Y. S, 2004).

In addition, the legal approach used in this study uses that the law is assumed to be a pattern of institutionalized social behaviour that exists as a functional and empirical social variable in social life. The approach used in this research is the statutory *approach*.

The object of this research is Ponggok Village, Polanharjo sub-district, Klaten district. The literature search with secondary data as information, both in the form of primary legal materials and secondary legal materials has been carried out in this study. Primary legal materials consist of the 1945 Constitution which has been fourth amended, the Civil Code, Law Number 5 1960 concerning Agrarian Fundamentals (Law on Agrarian Principles), Law Number 6 of 2014

concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation, Law Number 17 of 2019 concerning Water Resources as amended by Law Number 11 of 2020 concerning Job Creation, Government Regulation Number 42 of 2008 concerning Management of Water Resources, Government Regulation Number 43 of 2008 concerning Groundwater and Government Regulation Number 121 of 2015 concerning Water Resources Management.

FINDINGS AND DISCUSSION

The word Construction according to the Big Indonesian Dictionary is the arrangement (model, layout) of a building (bridge, house, etc.): the house is sturdy because of reinforced concrete, the arrangement and relationship of words in a sentence or group of words, the meaning of a word is determined. by in a sentence or group of words (KBBI online, 2022). Meanwhile, construction according to *black's law dictionary* is the process, or the art, of determining the sense, real meaning, or proper explanation of obscure or ambiguous terms or provisions in a statute, written instrument, oral agreement, or the application of such subject to the case in question, by reasoning in the light derived from extraneous connected circumstances or laws or writings bearing upon the same or a connected matter, or by seeking and applying the probable aim and purpose of the provision (Henry Campbell Black, 1968).

So, the provisions in Article 76 paragraph (1) in Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation which states that Village Assets can be in the form of Village treasury land, *ulayat* land, Village market, animal market, boat moorings, Village buildings, fish auctions, auctions of agricultural products, Village-owned forests, Village-owned springs, public baths, and other assets belonging to the Village need legal construction.

A. Implementation of Village Spring Resource Management as a Village Asset

Talcott Parsons explains the theory of legal cybernetics between subsystems in society from the flow of high-level information systems to low-level and vice versa (Lili Rasjidi, and Putra, IB Wyasa, 2003). Parsons further stated that law can enter into a social sub-system that regulates the integration of individual activities in meeting needs and preventing conflicts. The law is very closely related to the cultural sub-system to maintain patterns and cultural values as a guide to behaviour. In addition, the law is also close to the political subsystem which emphasizes the achievement of goals. The economic sub-system influences the political sub-system to carry out the function of adaptation to the bio-physical community environment. Thus, economic capacity can change the various existing resources to adapt various resources to sustain life (Soemantri, 2001).

Parsons believes in four functions in all sub-systems, namely: *Adaptation*, namely (economic sub-system) the function of adjustment to situation and environment, and *Goal attainment*, namely (political sub-system) the function of achieving goals or objectives. Actions must be based on shared goals in the social system concerned, *Integration*, namely (the social subsystem) the function of integrating various factors related to achieving goals, and *Latent patterns maintenance*, namely (the cultural subsystem preserving the polarization that has been formed based on the values concerned (Uthman, 2010)

A adaptation	G Goal attainment
Economic	Political
Educational, Religious, Family	Legal
L Latent pattern maintenance – tension management	I integration

Figure 2: The relationship between functions and sub-systems that exist in society

In the context of managing springs in the village, 4 subsystems influence each other. In the economic subsystem, for example, Klaten district, natural springs have decreased. This is evidenced by the fact that in 2015 Klaten district had 174 springs (BPS Kab Klaten, 2015) while in 2021 only 143 springs (jogja.tribunnews, 2021). This happens in all regions in Indonesia. The loss of these springs is influenced by 2 things, namely on the upstream side: massive mining on the slopes of the mountain, massive logging of trees in green areas, taking water using deep wells, and changing the function of land which was originally for agriculture to become a tourist spot. Meanwhile, on the downstream side, in addition to excessive exploitation of water sources, the use of water is prioritized for water tourism which brings more income than other uses. Village community access rights to meet clean water needs are hampered. This causes the villagers to build deep wells. As a result, many villagers built deep wells resulting in a decrease in the number of springs in the village and neighbouring villages.

The political subsystem is supported by various parties to generate the village original income through asset management in the village. Asset management in the village should be more important to protect the village

community from the need for clean water than to get welfare in the form of profits from village assets in the form of springs managed by both BUM Desa and Private Business Entities. Then Article 77 paragraph (2) of Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation has the aim of improving the welfare and standard of living of the Village community and increasing Village income.

The reason for the village-owned spring has the meaning of "ownership" such as property rights regulated in Article 570 of the Civil Code which states that property is the right to enjoy an item more freely and to act on the item completely freely, as long as does not conflict with the law or general regulations stipulated by the competent authority and as long as it does not interfere with the rights of others, all of which does not reduce the possibility of revocation of rights in the public interest and appropriate compensation, based on statutory provisions. But on the other hand, ownership of this right is also regulated in Article 20 of the Basic Agrarian Law which states that property rights are hereditary, the strongest and fullest rights that people can have on land, keeping in mind the provisions of social functions. So that the village head cannot own the spring by enjoying an item more freely and acting on it completely freely. The social subsystem has the function of integrating individual activities in meeting needs and preventing conflicts. However, disharmony of regulations also occurs in several articles and norms, such as between Article 6 and Article 17 with Article 7 in Law Number 17 of 2019 concerning Water Resources as amended by Law Number 11 of 2020 concerning Job Creation with Article 76 paragraph (1) in Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation-the states guarantees society's right to access water to fulfil daily needs, which is healthy, clean, sufficient quantity, good quality, safe, sustainable, and affordable.

The village government, which is the smallest organization in the State of Indonesia, is given the authority in Article 17 of the Water Resources Law in conjunction with the Job Creation Law which states that in accordance with the norms, standards, procedures, and criteria set by the Central Government, it has the following duties: a. assist the Central Government and/or Regional Government in managing Water Resources in the village area based on the principle of public benefit and taking into account the interests of other villages, encouraging the initiative and participation of village communities in Water Resources Management in their territory, participating in maintaining effectiveness, efficiency, quality, and orderly implementation of Water Resources Management and assisting district/city Regional Governments in meeting the daily minimum basic needs of water for villagers.

However, Article 7 of the Water Resources Law in conjunction with the Job Creation Law states that Water Resources cannot be owned and/or controlled by individuals, community groups, or business entities. This article can be

interpreted with 2 meanings, namely that the village government is not prohibited from owning water resources including springs and the village government has the authority to control village assets without any restrictions. The village government is not prohibited from owning water resources including springs because the village government is an extension of the state executive agency while the village government has the authority to control village assets without any restrictions, which is the implementation of the recognition principle and the principle of subsidiarity. The principle of recognition is an acknowledgment of the right of the origin and the principle of subsidiarity is the determination of local-scale authority and local decision-making for the benefit of the Village community.

In formulating the meaning of “controlled by the State”, the Constitutional Court provides considerations in Number 3/PUU-VIII/2010 concerning the review of Law Number 27 of 2007 concerning Management of Coastal Areas and Small Islands against the 1945 Constitution of the Republic of Indonesia and the Decision of the Constitutional Court Number 001-002 - 022/PUU-I/2003 concerning the review of Law Number 20 of 2002 concerning Electricity to the 1945 Constitution of the Republic of Indonesia. Which states that the people are collectively constructed by the 1945 Constitution giving the state a mandate to make policies (*beleid*), make arrangements (*regelendaad*), carry out management (*bestuursdaad*), conduct management (*beheersdaad*) and carry out supervision (*toezichthoudensdaad*) for the greatest prosperity of the people.

In the context *Villages' Sustainable Development Goals* (SDGs Desa) it is stated that the Village is Decent for Clean Water and Sanitation. The idea in the Village SDGs is in line with Article 28H of the 1945 Constitution which states that everyone has the right to live in physical and spiritual prosperity, to live, and have a good and healthy living environment, and the right to health services. At the international level, the World Health Organization (WHO) emphasizes the provisions of Article 11 and Article 12 of the ICESCR as follows; An inclusive right that extends not only to timely and appropriate health care but also to those factors that determine good health, These includes access to safe drinking –water and adequate sanitation, adequate supply of safe food, nutrition, and housing, healthy occupational and environmental conditions, and access to health-related education and information (World Health Organization, 2003). This WHO opinion is supported by Majda El Muhtaj who argues that water is the essence of life, without water, human beings cannot live for more than a few days. It plays a vital role in nearly every function of the body, protecting the immune system-the body's natural defense and helping remove waste matter (Majda El Muhtaj, 2008).

However, at the level of implementing the right of village communities to obtain clean water through springs, it is very difficult even though in some

villages there are programs Provision of Community-Based Drinking Water and Sanitation (PAMSIMAS). PAMSIMAS is a *platform* for rural drinking water and sanitation development even though the program already has, the village's springs have been used as tourist attractions. So that the water that will be flowed as a form of the PAMSIMAS program is not completely clean. The need for technical regulations that regulate sterile places (parent) and places that can be used (derived) for a. basic daily needs; b. people's agriculture; c. environment sanitation; d. industry; e. mining; and f. tourist. This arrangement should be carried out by the Central Government, the Ministry of Energy and Mineral Resources.

According AS (Manager of Umbul Ponggok, 2020) stated that the water tourism business such as the Ponggok banner, many parties, both neighbouring villages and villages outside Java, are interested because the income earned is very profitable. Several neighbouring villages either have their springs or use deep wells to build water tourism such as Ponggok pennant. This has caused several neighbouring villages in Indonesia to have legal problems, both administrative law, and criminal law. Therefore, the village person could be due to a lack of knowledge or disharmony of regulations. Lack of norms in Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation is also one of the causes so legal construction is necessary.

The cultural subsystem, that some rural communities on the island of Java believe that the spring is identical to the holy water which is interpreted as the water of eternity. In addition, the meaning of the spring is a gift from God Almighty who gives life and blessings. The meaning of the existence of springs in the village forms a separate meaning in a village community that is local wisdom. As for the prohibitions, one of which is that the water source cannot be polluted, both physically and non-physically. Water regulation is already based on local wisdom such as subak in Bali, Susuk Sawang in Central Java, senguyun in Kalimantan and Sasi in Maluku (Siswadi, Tukiman Taruna, Purnaweni, 2011). A cultural subsystem to maintain patterns and cultural values as a guide to behavior. Parson's theory focuses on achieving *equilibrium* (balance in developed societies), of the four sub-systems. So that the spring in the village must be a point of *equilibrium* that can benefit all parties, not only the central government, local government, village government, village communities, and neighbouring village communities.

B. Formulating Ideal Legal Norms Regarding Village Owned Springs in the Village Law

In Article 76 paragraph (1) of Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation which states that Village Assets can be in the form of village treasury land, *ulayat* land, village

market, animal market, boat moorings, village buildings, fish auctions, agricultural products auctions, village-owned forests, village-owned springs, public baths, and other assets belonging to the village there is a lack of norms so it is necessary to construct new norm. Between Article 76 paragraph (1) and paragraph (2), one paragraph is inserted, namely to clarify the meaning of property in Article 76 paragraph (1). The meaning of this property is not only mentioned in village-owned springs but also village-owned forest terminology. As for the insertion of this paragraph between Article 76 paragraph (1) and paragraph (2), a new norm is proposed in paragraph (1a), namely village assets as referred to in paragraph (1), as long as it is by the Right of Recognition, Community Development, Right to Control the State, and principles of the Unitary State of the Republic of Indonesia.

This makes it clear that "ownership" is not free to exploit springs and forests in the village but performs optimal management in the context of access rights to protect village communities, both in their village and in neighbouring villages, according to the principles of kinship and mutual cooperation.

Therefore, the formulation of norms inserted in Article 76 paragraph (1) and paragraph (2) of Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation provides justice values that are not only fair between managers of BUM Desa/Private Business Entities with village communities but also neighbouring village communities who require clean and good water for daily needs.

CONCLUSION

The conclusion that can be drawn from the discussion above is that from the theory of cybernetics, according to Talcott Parson, the four subsystems cause problems so that equilibrium is not achieved. So that to achieve this equilibrium, it is necessary to build a new norm in Law Number 6 of 2014 concerning Villages as amended by Law Number 11 of 2020 concerning Job Creation which provides provisions for village assets as referred to in paragraph (1), as long as they are in accordance with the Right of Recognition, Community Development, the Right to Control the State, and the principles of the Unitary State of the Republic of Indonesia

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Undang-Undang Dasar 1945 yang telah diamandemen keempat.
Kitab Undang-Undang Hukum Perdata
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Undang-Undang Nomor 6 Tahun 2014 tentang Desa sebagaimana diubah Undang-Undang Nomor 11 Tahun 2020 tentang Cipta Kerja
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