

Analysis of Criminal Disparities against The Offenders of Theft Crimes With Weighting

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Abstract. *Research purpose this is study and analyze the disparity of the judge's decision against the perpetrators of the crime of theft with weighting in Decision Number 81/Pid.B/2021/PN Sbrand To review and analyze the judge's consideration of the decision criminal disparity against the perpetrators of the crime of theft by weighting the Decision on Case Number 81/Pid.B/2021/PN Sbr. This study uses a sociological juridical approach. The results of this study show that from the two judges' decisions in the crime of theft with weighting there is a criminal disparity, due to the subjective and objective factors of the judge, namely the applicable legal system, legislation, originating from the panel of judges, criminal events, demands from the Public Prosecutor, aggravating matters and relieve the accused. Based on the judge's considerations that led to disparities in criminal justice regarding the crime of theft by weighting, among others, based on the facts and evidence at trial, the actions of the Defendant have fulfilled the elements of the formulation of Article 365 paragraph (1) 4th and 5th of the Criminal Code*

Keywords: *Criminal; Disparity; Theft; Weighting.*

1. Introduction

Basically the judge has various considerations in imposing the light weight of the sentence on the defendant. Among these are aggravating and mitigating circumstances, both contained within and outside the law. Among them are contained in the law, namely on mitigating sentences, namely: assistance (medeplichtige) in Article 56 of the Criminal Code and aggravating matters, namely concurrent criminal acts (concursum) in articles 63 to 71 of the Criminal

Code.¹The judge in imposing his sentence, of course, besides being based on statutory provisions, also considers human values, the principle of expediency, effectiveness in carrying out punishment and changes in behavior that cause a deterrent effect after leaving the penitentiary. Because without considering these aspects, it will lead to legal uncertainty and injustice in giving punishment.

This has led to the occurrence of many unequal criminal applications against the same crime (same offense) in practice in court. And this is according to Molly Cheng as quoted by Muladi, which is called the disparity of judge's decisions or known as the disparity of sentencing.²

Criminal disparity is the application of punishment that is not the same for the same crime or for a crime whose dangerous nature can be compared, without a clear justification. Criminal disparities arise because of the imposition of different sentences for similar crimes. This criminal conviction is of course the punishment imposed by the judge, against the perpetrators of a crime so that it can be said that the role of the judge in the event of a criminal disparity is very decisive.³

This disparity in the judge's decision will have fatal consequences, when it is associated with the administration of convict development. After comparing the sentence imposed on him with that imposed on other people, the convict feels that he is a victim of court uncertainty and will become a convict who does not respect the law, even though respect for the law is one of the results to be achieved in terms of sentencing.

Criminal disparities arise because of the imposition of different sentences for similar crimes. This criminal conviction is of course the punishment imposed by the judge against the perpetrators of the crime so that the judge in terms of deciding sentencing cannot be separated from disparities.⁴

Disparities in sentencing can be justified, in the following cases: first, disparities in crimes can be justified for punishment of rather serious offenses, but the disparities in crimes must be accompanied by clear justification reasons; second,

¹Widiyani Ratna Furi, Criminal Disparity in Violent Theft Crimes at the Sleman District Court, Vol 6 No 1, Recidive, April 2017

² Muladi and Barda Nawawi Arief, 2010, Criminal theories and policies, 4th Printing, Bandung: Alumni, p. 54

³Een Indriyanie Santoso and Gunarto, "Criminal Disparity Against Children's Cases (Case Study at the Demak District Court)", in Khaira Ummah Law Journal of 15, No 4 December 2020, <https://jurnal.unissula.ac.id/index.php/jhku/article/view/2605/1959>

⁴Wahyu Nugroho, DISPARITY OF PENALTIES IN CRIMINAL CRIMINAL CASES WITH GROWTH A study of Decisions Number 590/Pid.B/2007/PN.Smg and Number 1055/Pid.B/2007/PN.Smg. Vol 5 No 3, Judicial Journal, 3 December 2012

criminal disparity can be justified if it is justified or reasonable.⁵

So many cases of theft occur in the District Court. The source of one of the factors for the occurrence of the crime of theft is educational, environmental and economic factors. Therefore, the number of convicted cases at the Sumber District Court cannot be separated from the criminal disparity in imposing criminal decisions on the accused, with the considerations of the judges. Decision Number 182/Pid.B/2021/PN Sbr and Number 81/Pid.B/2021/PN Sbr, stated that the judge decided to impose a sentence with a different principal criminal sanction, which made a different decision in the case.

In decision number 182/Pid.B/2021/PN Sbr, he was sentenced to Article 363 paragraph (1) 4th, 5th of the Criminal Code with a prison sentence of 1 year and 10 months and in decision number 81/Pid.B/2021/PN Sbr sentenced to article 363 paragraph (1) 4th, 5th Criminal Code with imprisonment for 1 year. with the actions taken it was legally proven and convinced the judge that the Defendant had committed the crime of theft with weighting as stipulated in Article 363 paragraph (1) 4th, 5th of the Criminal Code. In the case of the crime of theft by weighting it is very different from other types of theft.

According to the Criminal Code, theft is generally classified into 4 types, namely: ordinary theft, aggravated theft, petty theft, violent theft and family theft.⁶ Each of these thefts has different provisions in terms of punishment. However, here what the author focuses on is only one type of theft, namely theft by weighting. Theft with weighting (Gequalificeerd Diefstal) is also known as theft with qualifications regulated in Article 363 of the Criminal Code which is different from ordinary theft (Article 362 of the Criminal Code). The theft referred to in Article 363 is coupled with a specified form and method of committing the act, time and type of stolen goods so that the quality of theft is considered burdensome, it is necessary that the punishment be heavier than ordinary theft.

Based on the problems that have been formulated above, the objectives to be achieved in this study are to study and analyze Judge's Consideration of the Offender Crime of Theft with Aggravation in the District Court Source in Decision Number 81/PID.B/2021/PN.SBR with decision Number 182/Pid.B/2021/PN Sbr

2. Research Methods

This study uses a sociological juridical approach. The specifications in this study are analytical descriptive in nature, the data used are primary data and

⁵Romli Atmasasmita, 1996, Criminal Justice System, Bandung: Copyright, page 82

⁶R. Soenarto Soerodibroto, 2006, Criminal Code & Criminal Procedure Code, Jakarta: PT Raja Grafindo Persada, pp 223-224.

secondary data, using data collection by interviews and literature studies, qualitative data analysis, problems are analyzed by theory, law enforcement and legal certainty.

3. Results and Discussion

The judge has freedom in his power to choose weight and the lightness of the sentence to be imposed for the sake of upholding justice in accordance with the rule of law, because it has been determined by the 1945 Constitution article 24 which states that the judicial power is an independent power to administer justice in order to uphold justice. The meaning of freedom in carrying out judicial authority is because the judge's job is to uphold law and justice based on Pancasila by interpreting the law and seeking the legal basis and principles on which it is based, through the cases before him, so that his decisions reflect the feelings of national justice and people of Indonesia.⁷

Article 12 of the Criminal Code which states that: (1) Imprisonment is for life or for a certain time. (2) Imprisonment for a specified period of time is a minimum of one day and a maximum of one day fifteen years in a row. 3 exceeded due to additional punishment due to concomitant, repeated or due to imprisonment for a certain period of time may not exceed twenty years. Regarding the aggravating and mitigating circumstances or circumstances for the defendant, it is regulated in Article 197 paragraph (1) letter (f) of the Criminal Procedure Code which states that the sentencing decision contains: "Articles of laws and regulations which form the basis of convictions or actions and articles of laws and regulations the legal basis for the decision, accompanied by aggravating and mitigating circumstances for the defendant. Apart from being regulated in article 197 of the Criminal Procedure Code, this is also regulated in article 8 paragraph (2) of Law no. 48 of 2009 which states that: "In considering the severity of the crime, the judge is also obliged to pay attention to the good and bad nature of the defendant"

In Decision Number 182/Pid.B/2021/PN. Sbr defendant was sentenced to prison for 1 year and 10 months while the Decision Number 81/Pid.B/2021/PN. The SBR defendant was sentenced to imprisonment for 1 year as described above shows that the criminal sanction imposed by the judge between case Number 182/Pid.B/2021/PN. Sbr and case Number 81/Pid.B/2021/PN. Sbr has differences even though the Article used by the Public Prosecutor is the same, namely Article 363 Paragraph (1) 4th to 5th of the Criminal Code.

From the two decisions, according to the authors of the comparison, there is a criminal disparity in the case of the crime of theft with weighting are:

⁷Sudikno Mertokusumo, 2006, Indonesian Civil Procedure Code. Yogyakarta: Liberty, p. 20

First, In general, seen from the juridical aspect that the law or The Criminal Code in general contains an indefinite formulation system. In article 363 paragraph 1 of the Criminal Code, it is punishable by imprisonment for a maximum of seven years, from here the legislators give freedom to judges to choose the time span between a minimum of one day to a maximum of seven years in prison.

Second, The culprits are different according to article 55 of the Criminal Code "Mededaderschap" consists of four types of actions which can be in the form of: Doing it yourself or the perpetrator (pleger); Ordering others to do (doenpleger); Participate in committing a crime (medepleger); Motivating others to commit a crime (uitlokker).

In case Number 182/Pid.B/2021/PN. Sbr, the accused is included in the person who participated in the crime, co-committed" in the meaning of the word "together committed". There must be at least two people, namely people who carry out (pleger), namely Mr. Rz who is still on the wanted list (DPO) and the person who participated in (medepleger) the criminal incident, namely the defendant HS bin A (Alm), here the defendant's role is watching from outside the house to arrive at the stolen goods by damaging the door lock using a tool in the form of a screwdriver Min (-) and 2 (two) Letter L keys that had been prepared previously. And the items stolen from the Witness Leni Victim in the form of Gold Jewelry totaling 4 (four) Yellow Gold Rings along with letters, 1 (one) Yellow Gold Necklace along with letters, and Cash of IDR 10,850,000. - (Ten Million Eight hundred thousand Rupiah) if the total is Rp. 20,000,000 (Twenty Million Rupiah).

In Decision Number 81/Pid.B/2021/PN. Sbr, the defendant is also included in the person who participated in committing the crime, at least there must be two people, namely the person who committed it (pleger), namely Mr. Wr, Mr. Miss, Mr. Tt and the person who participated in (medepleger) the criminal incident, namely the defendant ZEP bin MR, who played the role of transporting goods that had been stolen from PG Tresna to arrive at the stolen goods by means of a hole in the wall that had been made by Mr. Wr, Mr. Miss, Mr. Tt. Then the items stolen from the PG Tresna Factory were 08 (eight) 6 inch Galvanized pipe rods with a length of approximately 1.2 meters and 1 (one) 6 (six) inch butterfly valve worth Rp. 5,250,000 (Five Million Two Hundred Fifty Thousand Rupiah).

Third, The items taken vary from goods to lowest level to highest. In Decision Number 182/Pid.B/2021/PN. Sbr Defendant HS bin A, 49 years old, together took items in the form of 4 (four) pieces of gold jewelry, yellow gold rings and letters, 1 (one) piece of yellow gold necklace and letters, and cash in the amount of Rp. 10,850,000.- (Ten Million Eight hundred thousand Rupiah) with a total loss of Rp. 20,000,000 (Twenty Million Rupiah). Whereas in Decision Number 81/Pid.B/2021/PN. The defendant ZEP bin MR, aged 28, jointly took 08 (eight) 6-inch galvanized pipe rods with a length of approximately 1.2 meters and 1 (one)

butterfly valve measuring 6 (six) inches which was in the back warehouse without permission from the rightful owner, namely PG. Tersana Baru Babakan worth Rp. 5,250. 000;- (five million two hundred and fifty thousand rupiah) or at least more than Rp. 2,500,000;- (two million five hundred thousand rupiah). This affects the judge's consideration in imposing a sentence.

Fourth, There are different ways to commit theft, in Decision Number 182/Pid.B/2021/PN. Sbr Defendant participated in a criminal incident with Brother Rz (DPO) to reach the items taken by prying, damaging the door lock using a tool in the form of a screwdriver Min (-) and 2 (two) Letter L keys that had been prepared beforehand. Decision Number 81/Pid.B/2021/PN. Together, the defendant ZEP bin MR, aged 28, agreed to commit theft by adding weight by drilling a hole in the wall made by Brother Wr to enter the PG Tresna Baru Factory.

Fifth, Motives for committing theft vary, some are privately owned and sold. In Decision Number 182/Pid.B/2021/PN. Sbr Defendant HS bin A, 49 years old, committed the crime of theft with a charge for daily needs. Decision Number 81/Pid.B/2021/PN. Sbr Defendant ZEP bin MR, aged 28, committed the crime of theft by weighting the stolen goods to be sold, divided by three with the other co-defendants who participated in the theft by weighting.

Sixth, The aggravating and mitigating factors for the defendant. In both decisions, the thing that weighed on the defendant was that the defendant's actions disturbed the community. Then mitigating things, the Defendant was polite in court, the Defendant regretted his actions, the Defendant had never been punished.

From the comparison of the sentences for the two decisions, it was caused by several factors behind the disparity in decision making decisions by judges at the District Court. Sources include: first, the legal system. Indonesia's legal system is a country that adheres to the Continental European legal system (civil law system).⁸The civil law system adheres to regulations legislation, of course, results in a disparity. Meanwhile, with a country that adheres to the Anglo Saxon legal system which adheres to jurisprudence law. In the civil law system, jurisprudence is a persuasive president but is not formally binding on other judges or is not required to be followed. In the Anglo-Saxon system, which adheres to the principle of the president, which is the binding force president, which means that the highest judicial decision in a particular case must always be followed by other

⁸Quarter Point Tutik, 2008, Construction of Indonesian State Administration Post Amendments to the 1945 Constitution, Surabaya: Kencana, page 144

judges under him who handle similar cases.⁹

The judge in deciding the prison sentence for the defendant, in decision number 182/Pid.B/2021/PN Sbr namely imprisonment for 1 (one) year and 10 months¹⁰and number 81/Pid.B/2021/PN Sbr imposes a sentence of 1 (one) year.¹¹So according to the authors of the results of the decision, the judge did not following the results of decisions on the same sentence that have been decided, even though in the past year there have been dozens of criminal cases of theft with weighting, there are a certain percentage of the same criminal decisions. Therefore it is in accordance with the legal system in Indonesia, namely continental law (civil law system) which is not obliged to follow the jurisprudence of the judge's decision afterwards. Judging from the juridical aspect, laws or the Criminal Code in general contain an indefinite formulation system. In article 363 paragraph 1 of the Criminal Code, it is punishable by imprisonment for a maximum of seven years, from here the legislators give freedom to judges to choose the time span between a minimum of one day to a maximum of seven years in prison.

Second, Legislative Factors. In laws and regulations that do not provide guidelines the awarding of punishment to judges in deciding their punishment is one of the factors in the occurrence of sentencing disparities. Specifically in the article in the Criminal Code regarding the crime of aggravated theft, the criminal provisions do regulate minimum and maximum sentence limits, but the benchmarks or guidelines regarding the pattern of punishment are not clearly specified, so there is a potential for criminal disparities to occur. This can be seen in Article 12 paragraph (1) imprisonment for life or for a certain time, paragraph (2) of the Criminal Code, which states that a certain period of imprisonment is a minimum of 1 (one) day and a maximum of 15 (fifteen) years successively. Whereas in paragraph (4) it stipulates that imprisonment for a certain period of time may not exceed twenty years. Likewise with imprisonment in Article 18 paragraph 1 of the Criminal Code, it is stated that the imprisonment is for a minimum of one day and a maximum of one year, while Article 18 paragraph 3 of the Criminal Code stipulates that a one-time imprisonment shall not exceed one year and four months. Article 30 of the Criminal Code stipulates that a minimum fine of three seventy rupiahs is imposed. If the fine is not paid, it is replaced by imprisonment and the duration of the imprisonment in lieu of a fine is at least one day and a maximum of six months. it is stipulated that the penalty is a minimum fine of three rupiahs and seventy cents. If the fine is not paid, it is

⁹[https://www. Hukumonline.com/klinik/detail/review/cl1679/yurisprudensi/](https://www.Hukumonline.com/klinik/detail/review/cl1679/yurisprudensi/), accessed at 13:37, 22/07/2022

¹⁰Directory of Decisions of the Supreme Court of the Republic of Indonesia, Decision Number 182/Pid.B/2021/PN Sbr, page 27.

¹¹Directory of Decisions of the Supreme Court of the Republic of Indonesia, Decision Number 81/Pid.B/2021/PN Sbr, page 19.

replaced by imprisonment and the duration of the imprisonment in lieu of a fine is at least one day and a maximum of six months. it is stipulated that the penalty is a minimum fine of three rupiahs and seventy cents. If the fine is not paid, it is replaced by imprisonment and the duration of the imprisonment in lieu of a fine is at least one day and a maximum of six months.

In the article of theft with weights charged against the defendant by the judge in decision number 182/Pid.B/2021/PN Sbr and number 81/Pid.B/2021/PN Sbr, namely Article 363 paragraph (1) 4th to 5th although with the same article but the indictment imprisonment is very different, which results in criminal disparities. According to the author's analysis, Article 363 paragraph (1) 4th to 5th is an article on theft with weighting, the legal threat of which is increased to a maximum of 7 years. This article cannot be separated from article 362 which reads: "Whoever takes goods, which are wholly or partly owned by another person, with the intention of unlawfully possessing them, is threatened with theft, with a maximum imprisonment of five years or a maximum fine of sixty rupiah."

Article 363 paragraph (1) 4th and 5th: (1) Shall be punished with a maximum imprisonment of seven years: 4th, namely theft committed by two or more persons in alliance". The 5th is to enter the place of committing a crime, or to arrive at the goods taken, by destroying, cutting or climbing, or by using fake keys, fake orders or fake official clothes.

Third, Factors originating from the panel of judges. Various ideological understanding of a basic values or philosophy of punishment, is the trigger for the occurrence of disparities originating from the judges themselves.¹² The social environment that influences the judge's personality is the factor of criminal disparity that comes from judges. It cannot be denied that it is very difficult for a judge to close himself to these factors in the process of making a decision to impose a sentence.¹³

The independence of judges as referred to in Article 3 paragraph (1) of Law no. 48 of 2009 states that in order to realize judicial power, independent, it is obligatory for the judge to always maintain the independence of the judiciary in carrying out its duties and functions. Based on the elucidation of Article 3 paragraph (1), what is meant by the independence of judges is freedom from outside interference and freedom from all forms of pressure, both physical and

¹²Tama S.Langkun, 2014, Study of the Disparity in Decisions on Criminal Cases of Corruption, Jakarta: Indonesia Corruption Watch (ICW), page 40

¹³Isakh Benyamin Manubulu, 2018, The Inspirational Concept of Court Decisions: Problems and Efforts to Minimize Disparities in the Decision Making Process for Corruption Crimes in Indonesia, West Denpasar: Constitutional Law, Faculty of Law, Udayana University, page 11.

psychological.¹⁴

With different judges indeciding a case of the same crime, then it is one of the events that will create a decision that is different from the logical understandings in the decision. In the decision number 182/Pid.B/2021/PN Sbr and 293/Pid.B/2021/PN Sbr the judge who made the decision was different. Judges in imposing sentences on defendants have various ideological reasons.

Fourth, Factors Sourced From Criminal Events. Factors related to criminal events in this decision include the role in criminal events by the defendant, according to the author in Decision Number 182/Pid.B/2021/PN. Sbr Defendant HS bin A (Alm) played a role in monitoring the surroundings of the house when the crime of theft was carried out, the main perpetrator was Brother Rz who fled when he was stopped by several witnesses and was put on the wanted list (DPO). Because the other perpetrators of the crime fled, namely Rz's brother, while the evidence was still in the hands of the defendant HS bin A (Alm) and witnesses found him to report the crime of theft.

In decision Number 81/Pid.B/2021/PN. Br, accused ZEP bin MR, aged 28, played the role of a person who participated in a criminal incident by waiting for news from Brother Wr to transport the stolen goods. When the defendant brought the items that had been stolen to the junkyard to be resold. Then the defendant unloaded the goods and was immediately secured by the factory security guard witness to be reported to the Babakan police for further processing. In this case the defendant did not commit the crime alone but with 3 other friends, namely brother Wr, brother Nn, brother Tt who were the main perpetrators in this theft. However, one person was listed because the other friend was still on the wanted list (DPO). The identity of the defendant matches the personal data of the defendant as listed on the identity card (KTP) of the defendant and can be held criminally responsible as a defendant in a theft case with this weighting. The role of the defendant's responsibility for the occurrence of criminal events and mitigating and aggravating circumstances. In addition to this, the cause of criminal disparity is the different roles of defendants in criminal cases and different judges who try them.

Fifth, Public Prosecutor Law Enforcement Factors. Each law enforcer has a position (status) and a role (roles). Therefore, a person has a certain position, usually called the role occupant.¹⁵ The existence of the prosecutor's office is desired as a law enforcement agency in Indonesia the field of prosecution realizes

¹⁴ Elisabeth Nurhaini Butarbutar, 2016, Law of Evidence (Analysis of the independence of judges as law enforcers in the process of proof), Bandung: CV Nuansa Aulia, p. 40

¹⁵ Soerjono Soekanto, 2014, Factors Affecting Law Enforcement, 13th Print, (Jakarta: PT Raja Grafindo, pp 19-20

a sense of justice, legal certainty, and the benefits of law in the life of society, nation and state. Law and law enforcement are some of the law enforcement factors that cannot be ignored because if ignored it will result in not achieving the expected law enforcement.¹⁶

The prosecutor's office plays an important role in carrying out prosecutions in court in cases of theft with weighting to prove the guilt of the defendant in court. If an error occurs in determining insufficient evidence, it can result in the acquittal of the defendant from all charges. If it does not meet the elements mentioned in Article 183 of the Criminal Procedure Code, the judge's decision-making in the trial results in ambiguity so that it can have an impact on the defendant's sentence. Such a situation can result if the prosecution is not carried out by fulfilling the matters in the prosecution.

From the explanation above, the public prosecutor at the trial, Decision Number 182/Pid.B/2021/PN. Sbr and Decision Number 81/Pid.B/2021/PN. Sbr there are several things that cause one of the disparities in decisions Judge's final decision:

- Claims in Decision No. 182/Pid.B/2021/PN. Sbr, a defendant named HS bin A (Alm) was prosecuted by the Public Prosecutor guilty of committing the crime of theft with an equalizer as stipulated in Article 363 paragraph (1) 3rd, 4th and 5th of the Criminal Code. The defendant is charged with imprisonment for 2 (two) years reduced while the defendant is in temporary detention. By stating the attached evidence, it is stipulated that the defendant pay court costs of Rp. 5,000 (five thousand rupiah).
- Demands on Decision Number 81/Pid.B/2021/PN. Sbr, Prosecutor The public demanded that the defendant ZEP bin MR be proven guilty of committing the crime of theft with weighting as stipulated and threatened with Article 363 paragraph (1) 4th, 5th of the Criminal Code. Sentenced a sentence against the Defendant with imprisonment for 1 (one) year and 3 (three) months reduced while the Defendant was in temporary detention with an order to remain in detention, by stating the attached evidence. Stipulates that the defendant pays court fees of Rp. 5,000, - (five thousand rupiah).

Sixth, Mitigating and aggravating factors for the defendant. What is meant by "aggravating and mitigating" is which makes it heavy or light, where weight and lightness are measurements, in this context aggravating and mitigating circumstances are the nature, subject, atmosphere or situation that applies to a crime, apart from the crime itself, which describes the level of seriousness of the crime or the level of danger of the offender, which affects the size of the severity

¹⁶Yesmil Anwar and Adang, 2009, Criminal Justice System, Concept, Components & Implementation in Law Enforcement in Indonesia, Bandung: Widya Padjadjaran, p.189

of the sentence to be imposed.

From the results of the explanation above, criminal disparities is a common thing that can happen in the imposition of a decision, because a judge when deciding a criminal case has the right, namely the principle of freedom of judges that cannot be influenced by other parties so that the decision handed down cannot be contested unless the decision can be tested through a higher court by ordinary legal remedies or extraordinary legal remedies. This is because the court's decision is the result of an assembly's decision obtained through a consensus based on the facts revealed in court and the evidence presented at the trial, although there is no denying the opportunity for judges to act fraudulently. Justice cannot be assessed absolutely because every human being has different views and the right to give value to something based on their personal views.

4. Conclusion

Based on the research results from the discussion, it was concluded that from the two judges' decisions in the crime of theft with weights there is a criminal disparity, due to subjective and objective factors of judges, namely the applicable legal system, legislation, sourced from the panel of judges, criminal events, demands from the Prosecutor Public Prosecutor, aggravating and mitigating matters for the defendant.

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