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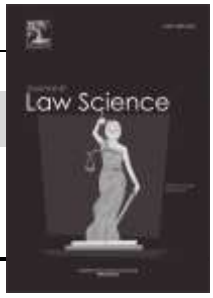

Policy on the Implementation of Restorative Justice for Prisoners in the Implementation of the Correctional System

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ABSTRACT

Restorative Justice is an alternative method of resolving criminal cases within the criminal justice system that can be implemented at every stage of legal proceedings are pre-adjudication, adjudication, and post-adjudication. Corrections constitute a component of the criminal justice system at the post-adjudication stage, where restorative justice can also be applied to inmates serving sentences in correctional institutions. The rehabilitation programs currently implemented in correctional facilities still rely on the concept of retributive theory, which focuses primarily on the offender, leaving the victim's interests largely unaddressed. The implementation of restorative justice in correctional institutions aims to restore the relationship between the offender and the victim through mechanisms such as compensation, reconciliation efforts, and rehabilitation. Inmates who have undergone restorative justice processes within correctional institutions may be eligible for release during the assimilation phase without having to wait for full reintegration. The government is expected to issue a comprehensive regulation for all law enforcement agencies as a foundational guideline for implementing restorative justice within the criminal justice system, along with technical guidelines or instructions that serve as a legal framework for correctional officers in applying restorative justice to inmates in correctional facilities.

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1. Introduction

Crime is a latent problem in the structure of the social life of society that always undergoes transformation in line with the dynamics of the times. Therefore, effective social control tools and rational intervention from the government are needed to overcome and prevent the escalation of increasingly complex and widespread criminal acts. The means and efforts in question are not only repressive, but also preventive and restorative in nature (Flora, 2023).

According to Barda Nawawi Arief's view, policies or strategies in crime prevention are basically an inseparable part of social defence efforts, with the ultimate goal of realizing social welfare. As emphasized by Barda Nawawi Arief, the concept of an integral crime prevention policy requires the implementation of all forms of crime prevention efforts in a rational, comprehensive, and coordinated manner in an integrated unit. In this context, penal policy through the application of criminal sanctions needs to be integrated with non-penal strategies that cover various sectors of social policy (*Beritno P. (2021)*, n.d.). Similarly, in the context of national development programs, the non-penal approach is directed at improving various social conditions that, although not directly, have a significant contribution in preventing crime. Therefore, from a criminological point of view, non-penal preventive measures have a very strategic role in the overall national criminal policy(Zahrulyani & Pratiwi, n.d.).

Van Bemmelen posits that criminal law functions as an ultimum remedium, implying that its application should be limited and only invoked when other branches of law prove inadequate in upholding legally recognized norms. In this context, the imposition of criminal sanctions must consistently be regarded as a measure of last resort (Yassine et al., 2024). This perspective should not be misconstrued as a rejection of punitive measures; rather, it underscores the necessity for judicious application—one that carefully weighs the potential benefits against the associated risks, ensuring that the punishment administered does not inflict harm exceeding the detriment caused by the offense itself. Similarly, Moeljatno asserts that criminal law falls within the domain of public law, as it governs the relationship between the state and its citizens and is intrinsically connected to the safeguarding and preservation of public interests (Studi et al., 2022).

The Indonesian Law No. 8 of 1981 concerning the Criminal Procedure Code (KUHAP) constitutes the principal legal foundation for judicial bodies in conducting criminal proceedings. This legal process is primarily centered on the accused, emphasizing their legal status from the point of being identified as suspects through to their final sentencing, while also ensuring the protection of their procedural rights throughout each phase (Syaputra, n.d.). Consequently, it can be deduced that the procedural structure embedded within the Criminal Procedure Code adopts an offender-centric orientation. As a result, the rights and interests of victims are often overlooked and do not receive sufficient or proportionate attention within the current criminal justice system (Taqiuddin, H. U., & Risdiana, R. (2022)., n.d.).

Restorative justice represents an alternative model for resolving criminal cases that has garnered significant attention across numerous legal systems in recent years. This method seeks to promote reconciliation between victims and offenders through constructive dialogue and consensual agreement, prioritizing outcomes that benefit both parties. Central to this approach is the restoration of harm experienced by the victim and the creation of opportunities for the victim to extend forgiveness to the offender (Sihombing, L. A., & Nuraeni, Y. (2023)., n.d.).

The practice of restorative justice entails the meaningful participation of offenders, victims, their families, members of the community, and other stakeholders who are directly or indirectly impacted by the criminal act, with the aim of reaching a mutually agreed-upon resolution and resolving the matter amicably outside the conventional judicial framework. This approach underscores a process that is equitable and participatory, wherein all involved parties engage collectively in addressing the offense and its repercussions, with a primary focus on restoration, reconciliation, and healing rather than punitive retaliation (Putri et al., 2023).

One of the reasons why the Directorate General of Corrections has proposed to implement restorative justice for adult inmates or perpetrators is the high overcapacity of correctional institutions and state detention centers in Indonesia. The basis for the implementation of this

policy lies in the successful implementation of the restorative justice approach towards children, as regulated in the Law of the Republic of Indonesia Number 11 of 2012 concerning the Child Criminal Justice System (SPPA). The existence of the Child Criminal Justice System Law has proven to be successful in accelerating the application of criminal case settlements with non-imprisonment decisions through diversion and other alternatives to punishment. In addition, the cost and benefit factor is also very influential in the implementation of restorative justice for prisoners because it can save the state budget (Sakirman, 2017a). Several programs that have been implemented by the Correctional Institution for prisoners are remission, assimilation program and integration program. These programs have not been able to restore social relations between perpetrators or prisoners with victims and families of victims (Rikiansyah et al., 2024).

A considerable segment of both the general public and law enforcement officials remains insufficiently informed regarding the significance of adopting the restorative justice paradigm within the criminal justice framework (Zeldi Putra et al., 2023a). The issue of overcrowding in correctional institutions and detention centers in Indonesia has significantly influenced the formulation of restorative justice policies. The implementation of restorative justice programs within the correctional system facilitates the accelerated integration of inmates into society, thereby enabling them to reunite with their families and reintegrate into community life more swiftly. Consequently, this approach contributes to a reduction in the population of correctional facilities. Strengthening the commitment of law enforcement bodies to prioritize restorative justice is imperative, particularly to ensure its applicability extends beyond juvenile cases and encompasses adult offenders. At present, the Directorate General of Corrections under the Ministry of Law and Human Rights of the Republic of Indonesia has yet to promulgate specific regulatory provisions governing the implementation of restorative justice for incarcerated individuals. The eventual establishment of such regulations is anticipated to provide binding operational guidelines for correctional officers, especially Community Supervisors, in advancing restorative justice practices within the prison system (Polavarapu, n.d.). The success of the restorative approach within the juvenile criminal justice system can be proportionally replicated for adult detainees. The implementation of diversion in the juvenile justice system, as mandated by Law of the Republic of Indonesia Number 11 of 2012, has proven to be effective. This law, along with the high success rate of diversion in juvenile cases, may serve as a foundational basis for the formulation of legislation governing restorative justice for adult offenders or inmates.

2. Method

Legal research is generally classified into two principal categories: normative juridical and empirical juridical. The normative juridical approach focuses on the examination of legal norms as stipulated in statutory regulations, judicial decisions, and the legal principles operative within society. This approach also involves the analysis of the consistency and harmony of legal provisions within a hierarchical legal framework. In contrast, the empirical juridical approach—often referred to as legal sociology—centers on the observation of legal phenomena within society and functions as a complementary tool to interpret and validate non-doctrinal findings in legal research or scholarly writing. In this study, the author employs a normative juridical research methodology.

The normative juridical methodology employed in this study refers to a comparative analysis of countries that have successfully implemented restorative justice for adult offenders, as well as the effective application of diversion for juvenile offenders. This comparative framework underscores the necessity of establishing regulations to govern restorative justice for adult

offenders/inmates. The primary criteria and sources used to assess the alignment between national legislation and the principles of restorative justice include the restoration of relationships between the offender and the victim, the victim's family, and the broader community. This alignment is demonstrated through the active involvement of victims in the resolution process and the presence of reparative efforts or customary settlements, reflecting the offender's accountability for the criminal act committed against the victim.

3. Analysis and Results

3.1 Overview

a. Definition of Restorative Justice

Restorative justice constitutes an approach within the justice system that is grounded in core philosophical principles and essential values such as accountability, transparency, trust, and restoration (Flora, 2023). Its primary objective is to reduce the adverse consequences of criminal acts by ensuring that offenders take responsibility for their behavior, while simultaneously empowering all stakeholders involved—namely victims, perpetrators, and the wider community. In practice, restorative justice addresses the needs that emerge following a criminal incident and seeks resolution strategies that prioritize healing, social reintegration, and the prevention of future harm (Alvin Nashir et al., 2024).

According to Umbreit, restorative justice is conceptualized as a response to criminal acts that prioritizes the restoration of victims' rights and interests. This approach facilitates the active participation of victims, offenders, their respective families, and the community in a collaborative process aimed at addressing and repairing the harm resulting from the crime (Silva, 2022).

Moreover, Hafrida and Helmi contend that restorative justice constitutes an approach to resolving criminal offenses that prioritizes the active involvement of victims, offenders, and the broader community in collectively addressing and remedying the harm resulting from the criminal act.

Building upon the perspectives outlined above, restorative justice may be characterized as an approach that fosters engagement between the offender and the victim within a familial and dialogic framework, with the objective of attaining justice and addressing the harm caused by the criminal act, including provisions for offender compensation to the victim. This model conceptualizes the offense and its consequences as a disturbance of social harmony and interpersonal relationships within the community, thereby necessitating a collective and participatory effort by all concerned parties to restore balance. The resolutions sought through this approach prioritize fairness and inclusivity, ensuring the active involvement of victims in the process of conflict resolution (Fahriyanto Marikar, n.d.).

b. The Criminal Justice System in Indonesia

According to Sanford H. Kadish, the criminal justice system can be examined from three distinct perspectives: normative, administrative, and social. From the normative viewpoint, the system is defined as a set of legal rules that embody societal values through prohibitions enforced by penal sanctions against behaviors considered seriously wrongful or harmful (Ilham Saputra Machmud et al., 2023). The administrative perspective encompasses the formal institutions responsible for enforcing criminal law, including the police, prosecutorial bodies, judiciary, as well as penal and correctional services. Meanwhile, the social perspective regards the criminal justice system as comprising all societal elements and their contexts, extending

beyond legislated criminal laws to include the norms and regulations operating across various social strata (Nampewo et al., 2022).

The criminal justice system in Indonesia is governed by the Criminal Procedure Code (KUHAP), as established by Law Number 8 of 1981. KUHAP serves as the legal framework that regulates the enforcement of criminal law, functioning as a system of authority delegated by the state to institutions such as the police, prosecutors, judiciary, and correctional facilities to carry out their law enforcement responsibilities. Alongside the formal procedural law governed by KUHAP, substantive legal provisions are primarily derived from the Criminal Code as well as other relevant legislation outside the Criminal Code (Lodi et al., 2022).

The criminal justice system, often referred to as the law enforcement system, embodies the concept that relevant institutions actively implement and enforce abstract legal norms in practice. One approach to addressing crime as a social phenomenon involves the application of criminal legislation through a criminal justice system structured and administered by the state or governmental authorities (Hobson et al., 2022).

One of the innovations introduced in the Law of the Republic of Indonesia Number 1 of 2023 concerning the Criminal Code is the incorporation of the restorative justice concept. This approach aims to provide offenders with the opportunity to express remorse and assume responsibility toward the victims, while also allowing victims to share their experiences and emotions (Ekawaty Ismail et al., 2023). Furthermore, restorative justice functions to diminish hostility and restore social equilibrium, upholding the human rights and sense of justice of all parties involved. Consequently, this approach fosters mutual understanding and promotes social cohesion. Additionally, it seeks to transition away from the retributive paradigm still prevalent among society and law enforcement officials, within which correctional officers play a crucial role as part of the law enforcement apparatus.

c. The Correctional System in Indonesia

Indonesia implemented a prison system from before independence until 1964 which was guided by the prison system that prevailed during the Dutch East Indies rule. The purpose of the prison system is individualistic liberalism which emphasizes the position of the individual. The prison system seeks to prevent prisoners from breaking the law again, so that the development of prisoners is not considered and not carried out because it is only considered as a mere object (Mansur & Marzuki, 2018).

The concept of correctional was first introduced by Sahardjo in a speech at the ceremony of conferring the title of Doctor Honoris Causa in the field of Law at the University of Indonesia, which was delivered on July 5, 1963. The correctional concept proposed in that year was then realized in the form of a Correctional System. This step was based on a conference between prison directors throughout Indonesia on April 27, 1964 in Lembang, Bandung. 11 The Lembang Conference resulted in an agreement to make fundamental changes in the development of prisoners and correctional students. One of the fundamental changes promoted was the replacement of the colonial heritage prison system based on the Prison Regulations, with a guidance system oriented to the noble values of Pancasila and based on the 1945 Constitution of the Republic of Indonesia (Gang et al., 2024).

The correctional system in addition to laying the foundations of thought in protecting the community against the recurrence of evil deeds of prisoners but also lost people who violate the law are not tortured by providing life supplies as useful citizens in society through guidance (Candra & Sinaga, 2023). Prisoners are not subject to punishment in the form of physical torture,

but in the form of deprivation of liberty. The implication of this is that during the criminal period, individual freedom is limited, and after the criminal period ends, prisoners are expected to be reintegrated as good citizens and able to make a positive contribution to the nation and state.

3.2 Implementation of Restorative Justice in Correctional Institutions

a. Overview of the application of Restorative Justice in the Criminal Justice System

Restorative justice has been incorporated into the juvenile criminal justice process through the diversion mechanism, as stipulated in Law No. 11 of 2012 concerning the Juvenile Criminal Justice System. In addition, several components within the broader justice system have demonstrated the application of restorative justice principles, with notable implementation by the Indonesian National Police (Polri). As a key institution within the Integrated Criminal Justice System, the National Police plays a central role in the enforcement of criminal law and the facilitation of restorative approaches (Flora, 2023).

The Indonesian National Police (Polri) adopts the principles of progressive law in resolving cases through a restorative justice approach, which does not solely focus on juridical aspects, but also considers the value of benefit and substantive justice. (a) The material requirements for the implementation of restorative justice in accordance with Article 4 letter a of Police Regulation Number 8 of 2021 concerning Handling Crimes Based on Restorative Justice are: (a) Does not cause unrest and/or rejection from the community; (b) Does not have an impact on social conflict; (c) Does not have the potential to divide the nation; (d) Not radicalism and separatism; (e) Not a repeat offender of criminal offense based on Court Decision; and (f) Not a criminal offense of terrorism, a criminal offense against state security, a criminal offense of corruption and a criminal offense against the life of a person.

The formal requirements for the implementation of restorative justice are in accordance with Article 4 letter b of Police Regulation No. 2021 concerning Handling Crimes Based on Restorative Justice, namely: (a) Peace efforts between the two parties are possible, except in drug-related criminal cases; (b) Fulfillment of victims' rights and implementation of responsibility by the perpetrator is possible, with the exception of narcotics-related criminal cases.

Furthermore, the Attorney General's Office (AGO) applies restorative justice as a mechanism to realize community-based justice by engaging a range of stakeholders, including community figures, traditional leaders, and other elements of law enforcement. The prosecutorial body holds a critical mandate in implementing restorative justice, as enshrined in Article 139 of the Criminal Procedure Code (KUHAP), which authorizes public prosecutors to assess the sufficiency and procedural validity of investigative files prior to their submission to the judiciary. The AGO's application of restorative justice is guided by the Regulation of the Prosecutor's Office of the Republic of Indonesia No. 15 of 2020 on the Termination of Prosecution Based on Restorative Justice. The eligibility criteria for employing restorative justice at the prosecutorial level are delineated in Article 5, paragraph (1) of the regulation, which permits the lawful discontinuation of criminal prosecutions on restorative grounds, contingent upon the fulfillment of specified conditions: (a) The suspect is a firsttime offender; (b) The criminal offense is only punishable by a fine or punishable by imprisonment of not more than 5 (five) years; and (c) The criminal offense is committed with the value of evidence or the value of losses incurred as a result of the criminal offense is not more than Rp. 2,500,000, (two million five hundred thousand rupiah).

In 2024, the Supreme Court issued Supreme Court Regulation (Perma) Number 1 Year 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice. This regulation was drafted as a response to the needs of judicial practice in handling criminal cases that aim to achieve peace between victims and perpetrators through a restorative justice approach. The purpose of punishment, which was previously oriented towards aspects of retribution, as reflected in absolute theory or retributive theory, has now shifted towards a focus on the recovery of victims of criminal acts as well as the restoration of relationships between defendants, victims, and society, promoting the avoidance of imposing penalties that excessively deprive individuals of their freedom (Mansur & Marzuki, 2018).

Supreme Court Regulation (Perma) Number 1 of 2024, which provides guidelines for adjudicating criminal cases through the lens of restorative justice, requires that judges, when sentencing pursuant to Article 193 paragraph (3) of the Criminal Procedure Code, render decisions that impose penalties less severe than the maximum sanctions outlined in the indictment or those sought by the public prosecutor. Alternatively, judges may impose conditional sentences or supervisory measures. The overarching criteria for the application of conditional or supervisory sanctions include the nature of the offense, the defendant's suitability for such measures, and the fulfillment of all terms mutually agreed upon by the involved parties. The current correctional system still limits the function of reconciliation between inmates and victims, as it remains predominantly focused on the offender's perspective. As a result, the victim's interests are largely overlooked. Therefore, the implementation of restorative justice programs within the correctional system is expected to bridge the gap between the interests of offenders and victims, facilitating reconciliation and ultimately restoring the relationship between the offender, the victim and their families, as well as the broader community.

The types of cases eligible for resolution through restorative justice mechanisms are stipulated in Article 6 paragraph (1) of Supreme Court Regulation Number 1 of 2024 on Guidelines for Adjudicating Criminal Cases Based on Restorative Justice, which outlines the following specifics: (a) The offense committed qualifies as a minor crime, or the victim's financial loss does not exceed IDR 2,500,000 (two million five hundred thousand rupiah) or the equivalent of the local provincial minimum wage; (b) The criminal offense is a complaint offense; (c) The criminal offense carries a maximum sentence of five (5) years imprisonment under one of the charges, including jinayat criminal offenses as regulated by qanun; (d) Criminal offenses with juvenile offenders whose diversion was unsuccessful; (e) Traffic offenses that are crimes.

The provisions pertaining to these categories of cases are designed to establish a specialized framework for managing cases that meet the criteria specified under the diversion requirements within the Juvenile Criminal Justice System. Furthermore, these provisions partially correspond with the implementation of restorative justice within the prosecutorial institution, as mandated by the Regulation of the Prosecutor's Office of the Republic of Indonesia Number 15 of 2020 concerning the Termination of Prosecution Based on Restorative Justice. The current structural and functional readiness of correctional officers to assume the role of restorative facilitators, in contrast to their previous administrative roles, is reflected in the establishment of the functional position of Community Counselor. These officers are tasked with providing guidance and supervision to correctional clients. Consequently, with the enactment of a legal framework formulated by legislators, this role may be further supported by technical guidelines for the implementation of restorative justice within the correctional system.

b. Implementation of Restorative Justice in Correctional Institutions

The implementation of restorative justice in the correctional context is different from its implementation in the police and prosecutor's office. In the correctional environment, restorative justice is understood as an effort to reduce the number of offenders who must serve sentences in correctional institutions while expanding access for offenders to get out of these institutions (Hobson et al., 2022). The concept of reducing the number of offenders entering the correctional system is realized at the pre-adjudication stage through the provision of recommendations based on the results of community research on suspects, both children and adults. Meanwhile, efforts to expand the exit of offenders from correctional institutions are carried out by integrating prisoners back into society through the utilization of prisoners' rights, such as parole, conditional leave, assimilation, leave to visit family, and leave before release. The community research report prepared by correctional officers, known as community supervisors, serves as a mediator to assist prisoners in creating peace with victims and the community, so that the process of social integration can be effectively realized.

Restorative Justice implemented by the correctional center is very different from restorative justice implemented by the police, prosecutors and courts, but has the same goal of creating a restoration of relations between the perpetrators of criminal acts in this case prisoners, the community and victims (Nampewo et al., 2022).

Law No. 22 of 2022 on Corrections is the main legal basis for the implementation of the correctional system in Indonesia. The correctional institution acts as the frontline in implementing the principle of protection, which serves as an instrument to realize the objectives of the correctional system. This system is designed to protect the community from the risk of reoffending and to implement values that are in line with Pancasila (Silva, 2022).

Counseling serves as a method to facilitate the psychological rehabilitation of prisoners, many of whom experience remorse following the commission of a crime. Another critical aspect of restorative justice implementation within correctional institutions is reconciliation. Through counseling, inmates gradually restore their mental well-being and personal character, enabling them to reconcile and rebuild relationships with their families, victims, and the broader community (Rikiansyah et al., 2024).

The Indonesian state through the correctional system gives the right to prisoners who meet administrative and substantive requirements to participate in assimilation and integration programs, which include parole, conditional leave, and leave before release (Tiha et al., n.d.). These programs are often misunderstood as full release from detention. The implementation of the assimilation program is a coaching effort carried out by integrating prisoners or prisoners into the community, with the aim of preparing them to return to the social environment, providing opportunities to undergo part of the criminal period outside the correctional institution, and helping the process of adaptation of prisoners to the community environment (Sun & Park, 2023).

The assimilation program encompasses educational initiatives, vocational training, social work, and diverse forms of community-based guidance. In contrast, the integration program entails the continuation of a convict’s sentence outside the confines of the correctional facility, with the primary objective of facilitating the offender’s reintegration into society. Throughout the duration of the integration program, inmates remain subject to the oversight and support of the Correctional Center (Bapas) until the full completion of their sentence(Adystia Sunggara, 2023).

The implementation of restorative justice within correctional institutions is underpinned by the Law of the Republic of Indonesia Number 22 of 2022 concerning Corrections. This is explicitly reflected in Article 56 paragraph (1), which stipulates that community guidance includes assistance, supervision, and counseling. Moreover, Article 56 paragraph (3) clarifies that the assistance referred to in paragraph (1) letter (a) is designed to address the needs and safeguard the rights of individuals throughout the judicial process, encompassing the pre-adjudication phase, post-adjudication, and subsequent rehabilitative guidance (Sakirman, 2017b).

Restorative justice within correctional institutions may be implemented after inmates have completed half of their sentence or during the assimilation program, with the objective of reestablishing the relationship between offenders and victims, provided that mutual reconciliation has been achieved (Zeldi Putra et al., 2023b). This restorative justice process can occur while the inmate participates in the assimilation program, potentially allowing for early release from the correctional facility without the requirement to undergo an integration program. Successful implementation of this process necessitates the support of all stakeholders and is primarily applicable to certain categories of criminal cases, particularly those involving minor offenses (Shapland et al., 2023).
The application of restorative justice in correctional institutions can assist in addressing existing challenges, including the issue of overcrowding. Specifically, restorative justice can be implemented for inmates who have served half of their sentence or are undergoing an assimilation program, thereby contributing to a reduction in the prison population (Syaputra, n.d.).

4. Conclusion

Restorative justice is applicable to individuals currently incarcerated within correctional facilities, acknowledging that these institutions primarily operate at the post-adjudication phase. Consequently, the execution of restorative justice initiatives can be effectively facilitated within the correctional setting. The fundamental tenet of restorative justice centers on resolving criminal matters through the cooperative involvement of offenders, victims, their families, and other pertinent stakeholders in order to achieve equitable outcomes. This methodology emphasizes the restoration of conditions existing prior to the offense rather than the administration of punitive or retributive measures, while concurrently upholding the human rights of all participants. The formulation of policy recommendations in this study serves to strengthen the legal foundation for the development of technical regulations for correctional officers. It is expected that this research may serve as a basis for the government to establish regulatory frameworks for the implementation of restorative justice within the correctional system, similar to those already adopted by other law enforcement agencies, which have developed regulations or technical guidelines for the application of restorative justice within their respective institutions. A concrete form of integrating the findings of this study into the development of Standard Operating Procedures (SOPs) or operational guidelines for restorative justice in correctional institutions lies in its potential to become a driving factor for the issuance of regulations governing restorative justice in the correctional system. This would enable inmates to be granted release during the assimilation phase or after serving half of their sentence, thereby contributing to the reduction of overcrowding in prisons and detention centers.

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