

Al-Haram Law Discovery Process in Indonesian Ulama Perspective: A Study of Abdul Hamid Hakim's Thoughts

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ABSTRACT

This research is a literary study of the thoughts of a prolific Indonesian cleric, Abdul Hamid Hakim, on his trajectory in determining the provisions of illicit. To parse his thoughts, the study uses Islamic legal theory approach; and for analysis it uses content analysis. From this research it was found that, the provisions of illicit fundamentally must be based on the Quran and the Sunnah, which are paved on the rules of trajectory as follows: 1) the basis of the illicit is the prohibition in texts; 2) the illicit can be deduced by using the reverse logic of the nash command; 3) prohibitions are continuous, without time lag; 4) illicit is obtained because of the damage factor attached to an act; 5) Unlawful acts can give birth to other unlawful acts.

Keywords: *Ushul al-Fiqh, prohibition rules, Abdul Hamid Hakim*

1. INTRODUCTION

The revelation of Islam aims as a guide for the life of humankind, which its instructions of guide are accumulated in two main sources of Islamic teachings namely the Koran and al-Sunnah. Through these two sources, humans can get norms, provisions, legal instructions to illuminate their lives. Unfortunately, not every verse of the Koran and Hadith has clear meaning about the legal status of a case, so that Muslims need an instrument to immediately come to a clear understanding of the law. Even, there are many scriptural contents that need a deep study so that later produced definite legal provisions. There for, it is the role of Islamic jurisprudence in the framework, which is to bridge the al-Ummah (humankind) to arrive at a definite legal conclusion [1].

Nowadays in Indonesia, apprehensively there is the phenomenon of many Muslims preachers who easily infer the Islamic law without being based on the formulation of al-fiqh provisions. This phenomenon is caused by the low competence of a preacher in the mastery of Islamic jurisprudence [2][3] especially in Islamic legal maxim. Indeed, they forbid something recklessly, only based on the assumption of the interpretation of one or two provisions of the texts of Koran and Hadith [3]. Furthermore, in their reckless in understanding Islamic law, they do not have wide perspective and are intolerant to other groups that are different from their lines of understanding [4].

The issue of al-halal and al-haram is a very fundamental problem in Islamic law [5]. Then, due to a lack of competencies in using instruments of al-ijtihad and inferring the conclusion of Islamic law has implications for fatal mistakes in understanding al-halal and al-haram concepts. Therefore, this study tries to look at the rules of

Ushul al-Fiqh that can be used to determine the provisions of illicit. An Indonesian cleric in the early 20th century, Abdul Hamid Hakim from West Sumatra, has offered important concepts of ushul al-fiqh to be an instrument for Muslims to comprehend the understanding of the Qur'an and the Sunnah. Factually, he was the first Indonesian to write about Ushul al-Fiqh[6]. He was a prolific scholar at that time and his works was dominantly in Islamic law published in Arabic which are then widely used in various boarding schools in Indonesia, even in the Southeast Asia region. Unfortunately, research on his thoughts has not been done yet by many people, especially in the study of the illicit law.

Therefore, this study aims to find out and explore, 1) the thoughts of Abdul Hamid Hakim, 2) the concepts of haram, 3) the rules of prohibition according to Sharia.

2. RESEARCH METHODS

This research is a literature study about the process of finding illicit law. This research does not cover all aspects of Abdul Hamid Hakim life, but it is limited, which is only concerning his concept / thought about the discovery of unlawful law in the framework of Ushul al-Fiqh (Islamic Jurisprudence)[7]. Then, the approach of this study uses the Islamic legal theory. To analyze Abdul Hamid Hakim's thinking, content analysis is used. According to Holsti[8], the content analysis method is a technique for drawing conclusions by identifying the specific characteristics of a message objectively, systematically, and generalists. This content analysis is carried out through the process of identifying and studying the messages contained in a text. The main purpose of content analysis is to explain the characteristics of messages contained in general texts[9]. Content analysis is used to look at the contents of books written by Abdul Hamid Hakim.

This research is focusing on the works of Abdul Hamid Hakim in the field of Ushul al-Fiqh. In this case, there are at least three main books of Ushul al-Fiqh written by Abdul

Hamid Hakim, namely: 1) *Mabadi 'Awaliyah*, published by Sa'adiyah Putra, Jakarta; 2) *As-Sulam*, published by Sa'adiyah Putra, Jakarta; 3) *Al-Bayan*, published by Sa'adiyah Putra, Jakarta. Besides the primary works, the literature study will also explore the research works that have been done about him, to provide a more complete picture of his thoughts. In addition, the library study will also look at the works of other Indonesian scholars on *Ushul al-Fiqh*, as a comparison to Abdul Hamid Hakim's *fiqh* thinking, so that it is known about the constellation of his thoughts among other archipelago scholars.

3. RESULTS AND DISCUSSION

3.1. Overview of Abdul Hamid Hakim's Thoughts

Abdul Hamid Hakim, a famous figure from the Minang land of Sumatra, was called by Nurcholish Madjid, an Indonesian prominent contemporary scholar, as a reformist cleric with extraordinary mastery of Islamic sources[10]. In fact he was also referred to as the founder of the Indonesian *ushul al-fiqh* at that time[1]. Unfortunately, that studies of his thoughts are relatively very few found in the academic world. He was born in Sumpu, on the banks of Lake Singkarak in 1311 Hijri coincided with 1893 AD. He received a traditional education and was guided by Sheikh Muhammad Thaib Umar for two years at Sungayang and in 1910 after 16 years of his age, he studied at Maninjau and Padang Panjang with Sheikh Karim Amrullah (father of Buya Hamka). After completing his learning, Abdul Hamid Hakim was later appointed to become a teacher at the Jembatan Besi mosque, Padangpanjang. Since then he was popularly known as Angku Mudo Hamid (the young cleric). Subsequently he was later appointed as a Head Teacher with expertise in the field of *al-fiqh* (Islamic law), which replaced the position of Sheikh Abdul Karim Amrullah, who moved to Jakarta [6][11].

Uniquely, Abdul Hamid Hakim was the only Indonesian archipelago scholar who wrote the first book of *ushul al-fiqh* in Arabic at that time[6]. Even though he never studied directly to Mecca, but the depth of his knowledge was not inferior to other scholars who had studied in Middle East. In fact, his writings are all in Arabic whose studies are quite deep and have a great influence on the discourse of Islamic law in Indonesia. Indeed, his works are not only for madrassas and Islamic boarding schools in Indonesia, but are also used in the regions of neighboring Southeast Asia such as Malaysia, Singapore and Brunei Darussalam.

Another uniqueness, there are several throws of thought *al-Ijtihad* which he did as one form of reform of Islamic law which is quite controversial and maybe even "liberal". And of course, his thought of renewal was popular among people, and has a correlation with the context of interpreting and translating Islamic law into contemporary reality at that time. His interpretation of the *ahlul kitab* was very popular and was appreciated by many people, especially Nurcholish Majid[10]. His thoughts on the concept of the People of the Book (*ahlul kitab*) are known to differ from the opinions of

most scholars in his time, and can be said to be very responsive and positive in assessing the concept of the People of the Book as the legitimacy of the Koran in terms of interfaith relations, in the midst of most literature or opinions of scholars who were impressed "negative" in perceiving the *ahlul kitab*, both in terms of sociological and in theological terms. His advanced thinking is certainly inseparable from and influenced by the *ushul al-fiqh* methodology he has built so far.

Abdul Hamid Hakim was known as a scholar who has affiliated to the Shafi'it school of law, but he was also known as a reformer figure. Shafi'it religious scholars in Indonesia generally only concentrate on taking *al-aqwal* (opinions) of the previous scholars as *al-muqallid*, but Abdul Hamid Hakim did not. He was one of the *ulama* who is very loudly speaking about the opening of *al-ijtihad*. Therefore, he was a figure of scholars who are able to bring the spirit of reconciliation, can combine loyalty to the school and the necessity of *al-ijtihad*. In the perspective of Akh. Minhaji[12], to illustrate what Abdul Hamid Hakim did as the position of *al-ishlah*, is the process of changing thoughts in *ushul al-fiqh* that are evolutionary, not revolutionary. In practice, this pattern will provide a reasonable and proportionate appreciation of the various legacies of classical, middle and modern scholars of the era. Based on her research, Isnawati Rais[11] classified Abdul Hamid Hakim as a *mujahid mustaqil-murajih*, which was not bound and affiliated with the thoughts of a particular school, but he chose one of the many methods and legal principles that are considered to be strongest.

Abdul Hamid Hakim's thought of *ushul al-fiqh* is reflected in three of his very popular works, namely: *Mabadi 'Awaliyyah*[13], *As-Sulam*[14], and *Al-Bayan*[15], which are used for studying at the level of beginner, intermediate, and advance respectively. And the content of the first and second books are combined with *al-qawaid al-fiqhiyah*. While his *Al-Bayan* fully studies the theoretical of *ushul al-fiqh*. Abdul Hamid Hakim's fondness for the linguistic approach was increasingly apparent when he gave the title of his book with *Al-Bayan*, which shows that the approach and method is very linguistic. Likewise, looking at the structure of the writing, the initial discussion of this work prioritizes *al-qawaid al-lughawiyyah* (legal maxim) compared to other discussions.

The *al-bayani* (linguistic) approach in general is often blamed as a very rigid approach to the text. The *al-bayani* approach perceivably is often not responsive to empirical problems faced by the community[16]. Although this sharp criticism upon the *al-bayani* reasoning continues to emerge, in fact *ushul al-fiqh* cannot be separated from it. Because the main framework of *ushul al-fiqh* is to make the text as the main source for gaining knowledge based on *al-bayani* paradigm (the authority of the text)[17]. Abdul Hamid Hakim was known as a loyal figure to the *al-bayani* (linguistic) approach on the one hand, while on the other hand he was also very responsive to new real problems in the middle of social life. This shows a unique combination, that linguistic (*al-bayani*) reasoning does not make him rigid, but also flexible and adaptive.

3.2. *Haram (Illegal Law) Concept*

Illicit or illegal in Arabic language refer to a word al-haram [18], which means obstructed, disallowed, unlawful, banned [19], and noble. While in terms, ulama al-fiqh (Islamic Jurisprudence scholars) define it in various perspectives. Abdul Hamid Hakim defines as follows: al-haram huwa ma yutsabu 'ala tarkihi wa yu'aqobu' ala fi'lihi ka al-riba wa fi'li al-mafsadati (Haram is everything that is rewarded in leaving that act, and sanctioned in carrying out the act, such as usury and doing damage) [13].

This definition is widely used in the books of Islamic law in general and is easy to remember. Nevertheless, this definition still has weaknesses where this definition only focuses on aspects of the legal consequences for people who commit violations or for people who don't commit violations. This definition does not reveal the ways and methods of finding that illegal law from a Qur'anic text and hadith. Yet in the context of the reading of the text, the methodological aspects of the disclosure and discovery of the law are very important and the main thing. Therefore, Abdul Hamid Hakim in his other book, *Al-Bayan*, completes this definition by stating as follows: "al-tahrim huwa khithab Allah ta'ala yaqtadli al-tarka iqtidlaan jaziman" (Haram (al-tahrim) is a call (khitab) of Allah SWT that sets a provision to leave an act with very strict provisions) [15].

In the above definition it is explained that the determination of prohibition is determined based on the criteria of firmness in prohibiting an act contained in the text. So when a prohibited prohibition is contained in a text, the prohibition does not reach the al-haram level, but stops at the al-makruh (dislike) level. So from the two definitions it can be concluded that haram is everything that is rewarded for leaving an act and given a punishment for those who do it, which is based on the al-khitab (provisions) of God contained in the text explicitly and definitely in prohibiting the act.

In Abdul Hamid Hakim's perspective, the prohibition (al-nahyu) is divided into four categories, namely, first, the prohibition based on an instrument of human sensory. Sensory illicit means that everything whose knowledge is not dependent on the Shari'a, but can be obtained by sensory means for those who know the Shari'a or not. While the prohibition that is shar'i is everything that the knowledge is hung on the Shari'a, such as the prohibition for women when experience menstruation to pray. Because knowledge about praying is based or hung on the Shari'a. Second, the prohibition for some actions in a business, such as transaction fertilization male sperm for female pregnancy (animal), which results are still in the womb of animals. The prohibition is related to the object of transaction (al-ma'qud 'alaih), which causes uncertainty in the existence of its delivery. In Islamic law, the object of transaction is included in one of the pillars of the contract, namely the person who has the intention (al-'aqid), the object of the contract (al-ma'qud 'alayhi), and the transaction statement (al-sighat). Third, the prohibition for a mandatory condition, such as the prohibition of fasting on the two feast days of Eid. Because the feast is a day where Allah entertains his servants, then fasting on that day makes someone turn away from the supper of Allah SWT. Therefore, the Prophet forbade the

implementation of fasting on the day of Eid al-fithr and Eid al-Adha. Fourth, the prohibition on some traits that are not mandatory (common), such as buying and selling after the call to prayer Friday [15].

3.3. *The Method of Finding the Illegal Law*

The ulama al-ushul agreed that the main basis of unlawful law was obtained from the content of the prohibitions that are contained in the texts both in the Qur'an and Sunnah. Nash al-Quran and Sunnah become the main reference in determining the prohibition of all things. Abdul Hamid Hakim, basing his argument on the hadith revealed by the Prophet Muhammad as follows: al-halal ma ahalla Allah fi kitabihi, wa al-haram ma harama Allah fi Kitabihi wa ma sakata 'anhu fahuwa mima' afa 'anhu (Prophet SAW said: al-halal is everything that is permissible by Allah in his book, and al-haram is what is forbidden by Allah in his book, and everything that is allowed to be excluded is included (forgiven). (narrated by al-Timidzi and Ibn Majah) [13].

The legal conclusions should be avoided from errors and distortions, and must be inferred from the text properly. There for, the reading and understanding of the two sources of the Qur'an and the Sunnah must be done in a connection-interconnection, comprehensive, and not partial. So that, that is why the scholars of al-fiqh formulated the rules of al-ushuliyah in the understanding of the text, finally the logic of legal reasoning can be universally accepted among scholars, although it is not entirely agreed, because of the small differences between them [20]. The illegal rules or legal maxim elaborated by Abdul Hamid Hakim, which become instrument to finding legal conclusions, as follows:

3.3.1. *The Basic Forbidden Is The Prohibition Of Nash.*

The scholars of al-fiqh in general (jumhur al-ulama) argue that every prohibition is for forbidden. So when there are texts that contain prohibitions, the legal content that is contained in the texts is al-haram (illicit). Among the scholars, Abdul Hamid Hakim gave the following formula: Al-ashl fi al-nahyi li-al-tahrimi illah ma dalla al-dalil 'ala khilafih (The basis for the prohibition is to be forbidden, except for the argument that shows to the opposite) [13]. The formulation of this rule provides an understanding that every prohibition contained in the Qur'anic text and the hadith of the Prophet SAW is prohibiting. Noticeably, that this rule provides exceptions, that is when the proposition shows the opposite provisions, then the law contained in the text does not determine the prohibition, but determines the legal provisions other than al-haram, such as al-makruh, al-mubah, and so forth.

The Jumhur al-'Ulama, according to Abdul Hamid Hakim, argued that the human mind can understand the certainty that requires the form of pronouncement (al-sighat) which forbids something, which is not accompanied (apart) from certain indications. This is also done by the salaf scholars (formerly) when they postulated with a form of

disallowance that shows the prohibition of something, apart (not accompanied) with certain indications[15]. For example Allah SWT forbids: "And do not make damage on earth". (QS al-A'raf: 85). In this verse, Allah SWT prohibits humans to do damage. The certainty of the prohibition can be immediately understood by human reason, that every action that has implications for the destruction will result in illicit law, the certainty of the prohibition does not require reinforcement and other indications to ensure the prohibition of the acts of destruction.

Some scholars believe that the basic prohibition is for dislike, not forbidding. They formulated in the rules: al-ashl fi al-nahyi al-karahah (Basic prohibition is hated (dislike)[14][15]. In this perspective that to find about haram (illicit law), then another indicator is needed. However when no strong indicators are found in the text, then the prohibition stops with the law of al-makruh (dislike or displeasure), which is not up on the law unlawful (al-haram). For example, the prohibition in the following hadith: "One of you must not hold his genitals with his right hand when he urinates". The prohibition in the hadith is understood to be limited to just al-makruh, not to the provisions of al-haram, because when the prohibition in this hadith is understood as being obligatory (al-haram), it will have implications for odd laws, because genitals are part of the body that within certain limits of human needs must hold it.

3.3.2. Conclusion of Forbidden From Nash Based on Reverse Logic

One way to deduce the law from the text is to use reverse logic, which in the term of ushul al-fiqh is known as al-mafhum al-mukhalafah. This model of conclusion does not see from the end of a passage directly that the text is forbidding, but what is used is a rational logic building based on human reason, that behind the command of an action, there is a prohibition to do an opposite action. Abdul Hamid Hakim delivered one rule: al-amr bi al-shay'i nahyun 'an dhadli-hi (The command against something is a prohibition to the contrary)[13][14][15]. In the formulation of this inverse logic, a condition that is contradictory or opposite is only one condition and work as in the command of faith, then the reverse is a prohibition on the actions of al-kufr. And there are not reversed or contradictory states but various conditions, for example standing, then the opposite condition is the prohibition of sitting, lying down, prostration, and so on. This is the opinion of jumhur ulama al-ushul from Hanafi, Shafi'i, and Ahlul hadith[15]. And as an example of the application of these rules, for example in QS al-Baqarah: 83 Say good words to humans, establish prayer and pay alms. Then you don't keep that promise, except for a small part of you, and you always look away. (Surat al-Baqarah: 83)

The above verse contains the command to say kindly to humans. From the reverse understanding (mafhum al-mukhalafah) of the commands contained in the verse, the opposite understanding is found, namely the prohibition of saying bad things to humans. In other words, the command to say kindly to human, means the prohibition to say badly to human. So when the law obtained from the text is

mandatory, then with the opposite understanding of people who do the opposite act, the law is al-haram.

While, there is other opinions that the order to something is not the prohibition of the opposite. This is the opposite opinion with that expressed by al-Jumhur (the majority of Muslim Scholars)[21]. According to this opinion that a ban cannot be understood using reverse logic, but the prohibition must be based on a clear and concise proposition. This opinion was chosen by al-Juwaini, Al-Ghazali, and Ibn al-Hajib[15].

3.3.3. Absolute Prohibition Applies Repeatedly All the Time without Pause

Haram is absolutely valid all the time without any pause. Haram does not look at the time anytime and anywhere. When the provisions of the al-haram are declared by the text, then the al-haram continues to be repeated at any time, to anyone, and anywhere. This is different from the enactment of mandatory law, where the implementation of the law only applies once without repetition all the time, but the rules of the prohibition are the opposite. Abdul Hamid Hakim formulated as follows: "Al-ashl fi al-nahyi al-muthlaq yaqtadli al-takrar fi jami 'al-azminah" (Basic prohibition absolutely requires the repetition at all times)[13][15].

From this principle, it is understood that the prohibition applies forever, without any pauses. The prohibition of adultery applies anytime and anywhere. Likewise other restrictions such as theft, murder, making damage, and so on apply all the time without any room for the act to be violated. The prohibition applies at all time, as long as the conditions are normal and not in an emergency. In the Shari'a, when there is an emergency, no ordinary law is applied, but an emergency law that provides space for al-rukhsah (relief). The concept of emergency is given to humans because of the factors of compulsion that cannot be avoided. In an emergency, a person is given al-rukhsah (relief) in violation of a prohibited provision in a very limited context, namely to support an emergency and temporary life of human.

3.3.4. Prohibition Due to Damage Consequence

That the prohibition that has implications for the law is forbidden because of the damage caused. When there is a provision forbidding from the Shari'a to an act, then the act actually contains danger that causes damage to humans. In other words, all the prohibitions contained in the Shari'a have illat al-hukum (legal reasons). And the legal reason for the prohibition is because of the damage caused. In one rule, Ustadz Abdul Hakim stated as follows: "Al-ashl fi al-nahyi yaqtadli al-fasad muthlaqan" (Basic prohibition is to determine absolute damage)[13][14][15].

In the above rule, that every prohibition has an absolute implication of damage, so that the consequences are unlawful. And the prohibition is intended for the act itself, such as menstrual prayer and buying and selling male seedlings. This opinion is generally held by jumhur al-

‘ulama. While other opinions such as Abu al-Husain, al-Ghazali, and al-Razi stated that: “every prohibition does not determine damage except in the context of worship, not a matter of al-mu’amalah”. While some followers of the Shafi’ite school, Hanafi and Mu’tazilah believe that the prohibition does not determine the absolute damage[15]. Damage in the context of worship that is, the perpetrators do not receive merit and do not free the perpetrators from the responsibility of worship they carry. While the damage in the context of al-mu’amalah is that the al-‘aqad and al-mu’amalah that is done does not have any legal consequences, there is no transfer of ownership, and does not make it lawful[15]. Therefore the ulama al-ushul stated, if the contract was canceled, then the contract had no legal consequences whatsoever. Jumhur al-‘ulama argue that Muslim Scholars at all times always argue with this for damage in the matter of al-ribawi (usury), marriage, buying and selling, and so on. As for matters of worship, is to carry out something that is forbidden, and everything that is prohibited is everything that is not ordered and does not fulfill what is ordered. Therefore, a person who does not fulfill every command, then he still bears the responsibility of the command, and whoever still bears the responsibility of the command, means that he is not yet free from the responsibility that must be fulfilled.

3.3. 5. *Unlawful Acts Consequences for Other Unlawful Actions*

According to Abdul Hamid Hakim perspective, that illicit acts can have implications for further acts, which also have consequences of illicit law. In his book, Ustadz Abdul Hamid Hakim formulated this provision with the rule: *ma harama isti'maluhu harama ittikhadzuhu* (something that is forbidden to use it, it is forbidden to obtain it)[13][14]. In these rules explained that everything that is forbidden to be used, consumed, utilized, it is also forbidden to obtain it, work on it, produce it, distribute it, and even store it. In another rule explained as follows: *"ma harama akhdzuhu harama l'tha'uhu"* (Something that is forbidden to take, is also forbidden to give it)[13][14]. So everything that takes it is haram, so giving it is also haram too.

The basis of this rule is the Prophet's words: “Whoever falls on a doubtful item, then he falls on the haram, like a shepherd who is herding around the prohibition is feared to enter the ban”, (narrated by Bukhari and Muslim). Therefore, people are prohibited from storing immoral tools, such as it is forbidden for men to store containers or vessels made of gold or silver, silk and gold. The reason of the prohibition of storing these items because they (men) might use them. In Islam, men are disallowed to use the items. The basis of this rule is the Word of God: “Do not help in sin and hostility”, (QS al-Maidah verse 3). When someone is allowed to give it, it means helping and encouraging to take it, so that both become united in sin. For that, if it is forbidden to take it, then it is also forbidden to give it. Based on this rule it is forbidden to give usury money, bribes, prostitutes' wages, and witchdoctors' wages and so on, as it is forbidden to take it.

4. CONCLUSION

Abdul Hamid Hakim is the only prolific ulama of the early 20th century in the field of *usul al-fiqh* in Indonesia. He has written three main works in *Usul al-Fiqh* which are the main references in various *pesantren* in Indonesia and even Southeast Asia. His thoughts are included in the category of reformist scholars. Although he is known as a scholar of the Shafi’ite school, but he does not approve imitation and merely take legal opinion without the criticism argument. He always aroused awareness of *al-ijtihad* to continue to be carried out throughout the ages. This is what distinguishes his thoughts from the Shafi’ite scholars in Indonesia in general, which most of them did emphasizing the *al-taqlid* and sufficiency in the opinions of the early scholars, while he perceived *al-ijtihad* as an important instrument to comprehend Islamic law and to actualize it in contemporary world.

In the view of Abdul Hamid Hakim that *al-haram* (illicit) is determined by the text of the *Koran* and the *Sunnah*. And in the process of understanding the texts to arrive at the forbidden provisions by using reasoning. There are several rules for the determination of unlawful law, namely: 1) the basis of the prohibition is the prohibition in texts; 2) the forbiddenness can also be deduced by using the reverse logic of the *al-nash* command; 3) prohibitions are continuous, without time lag; 4) illegitimate law is obtained because of the damage factor attached to an act; 5) Unlawful acts can give birth to other unlawful acts.

ACKNOWLEDGMENT

I thank very much to the chairman of the committee of the Borobudur International Symposium (BIS 2019), Dr. Muji Setiyo who has given me the opportunity to participate in presenting my work, so I get a lot of valuable input for my article. I also thank to the Rector of the University of Muhammadiyah Magelang, Ir. Muh Widodo, MT, who has funded my participation in seminar and publication.

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