



Law Enforcement Against Payment of Wages Below the Minimum Wage

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Abstract. Payment of wages below the minimum wage is an employment crime that is classified as a crime. This shows how important it is for employers to pay attention to the wages set by the Government. This study aims to examine and analyze the legal consequences if employers pay wages below the minimum wage and how investigations into the payment of wages below the minimum wage. The legal relationship between workers and employers is principally a civil relationship, for the amount of minimum wage obtained by workers from employers is coercive and determined by the Government. The minimum wage is the lowest wage the Governor sets as a safety net. In the regime of the Manpower Law and the Job Creation Law, there are still criminal acts against wage payments that are not by the provisions of the law or in the Work Agreement or Collective Labor Agreement. Therefore, this study wants to know and analyze the legal consequences related to criminal acts regulated in the Manpower Law and the Job Creation Law and how law enforcement against labor crimes for payments below the minimum wage. To get answers to these problems, empirical juridical research methods are used which are analyzed analytically and descriptively on primary data legal materials and related documents. The results of the study found that labor crimes in the field of wages are crimes and criminal sanctions are regulated in Article 185 paragraph of the Manpower Law with the threat of criminal witnesses imprisonment for a minimum of 1 year and a maximum of 4 years and/or a fine of at least Rp. 100,000,000 and a maximum of Rp. 400,000,000. PPNS Ketenagakerjaan carries out law enforcement in the field of labor. Law enforcement is carried out in stages, starting from preventive, educational, and non-judicial repressive actions to judicial repressive actions.

Keywords: law enforcement, criminal acts, employment, PPNS, minimum wage.

1. Introduction

Labor law has the nature of protecting and creating a sense of social justice security for all Indonesian people. Labor law must be able to reflect legal products that are by ideals, justice, truth, and certainty, and have beneficial value for the parties. Labor law is not only concerned with business actors but also pays attention to and provides protection to workers. [1]

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The basic rights that are integrated with workers and must be fulfilled are legal protection. This provision is as stated in Law Number 13 of 2003 concerning Manpower (hereinafter referred to as the Manpower Law). This legal protection is carried out to protect the welfare of employees and their families while still paying attention to the interests of the employer. The forms of protection provided such as equal treatment by employers and the fulfillment of basic rights such as leave rights and rest rights. The provision of wages is carried out to provide a decent living for workers, as referred to in Article 28D (2) of the Constitution of the Republic of Indonesia 1945 states that everyone has the right to work and get fair and decent remuneration and treatment in employment relations. [2]

Legal relations in the field of labor are principally civil relationships, therefore they contain the principle of freedom in determining what they will contain in the agreement between workers and employers (employers), but the determination of the amount of wages is not necessarily given to the parties to determine it. This is due to the nature of labor law which contains several aspects, namely civil law aspects, administrative law aspects, and criminal law aspects field[3]. The existence of criminal aspects or criminal sanctions (*Utimum Remedium Principle*) in labor law to strengthen administration sanctions (*Administrative Penal Law*) used when administrative sanctions no longer work to address administrative problems[4]. The employment relationship between employers and workers/laborers is a legal relationship based on an employment agreement where each party has rights and obligations that must be fulfilled. [5]

Wages as one of the main factors in an employment relationship are often not met well by employers. It has been clearly stated in Article 95 (2) of the Manpower Law that employers who due to their intentional negligence cause delays in payment of wages, due to fines by a certain percentage of workers' wages. The amount of wages and the time when wages are paid by the company to workers/laborers have been regulated. Untimely payment of wages is a big problem because wages are very influential on the welfare of workers.

A criminal act is an evil act or crime (*crime* or *Verbrechen* or *Misdaad*) that can be interpreted juridically or criminologically. [6] Wirjono Prodjodikoro put forward a brief definition, namely criminal act means an act whose perpetrator can be criminally charged. [6] Jan Rimmelink defines criminal acts by beginning the statement that to be able to punish someone while fulfilling the demands of justice and humanity, there must be an act that is contrary to the law and that can be blamed on the perpetrator. [7] Criminal acts can also be identified by the onset of losses, which then result in the birth of criminal liability or criminal liability. [8]

Criminal acts in the field of Manpower can be interpreted as unlawful acts committed by both employers and workers who violate work agreements, company regulations, collective labor agreements, and Manpower Law where the threat of criminal sanctions is only regulated in labor law. [9] An act can be referred to as a criminal offense in the field of labor if it meets 5 (five) elements:

- a. There must be a behavior (dragging);
- b. The conduct must be by the description of the law (*wetterlijke omschrijving*);
- c. The behavior is behavior without rights (against the law);
- d. The behavior can be aggravated (accounted for) to the perpetrator; and
- e. The behavior was threatened with criminal charges.[10]

One of the criminal acts in the field of employment is related to wages, which specifies that employers who due to their failure to pay wages may be subject to fines further regulated in Government Regulations. Vice versa, workers who commit violations can be fined for their intentionality and negligence. In addition, Article 88 E states that employers are prohibited from paying wages lower than the minimum wage. Violation of Article 88A (3) and Article 88 E (2) is punishable by imprisonment for a minimum of 1 year and no later than 4 years imprisonment and or a fine of at least Rp. 100 million and a maximum of Rp. 400 million. violation of Article 88 A (3) and Article 88 E (2) is a criminal offense.

Minimum wage-related arrangements aim to minimize income inequality[11] Therefore, the minimum wage is expected to reduce inequality from income inequality where the minimum wage redistributes income by lowering the Company's profits and increasing workers' wages, by setting a minimum wage, wage standards will be higher and create a fair distribution of wages and income. [11]

The minimum wage also aims to guarantee a decent life for workers and their families, reflect the rewards of the fruits of labor, and provide incentives to encourage increased worker productivity. This is by Article 27 paragraph (2) of the Constitution of 1945 which states that every citizen has the right to work and a decent living for humanity. Where it can be obtained by workers through wages.

To take action against perpetrators of crimes against wage payments, a mechanism regulated in manpower is provided, namely the provision of PPNS to conduct investigations as mentioned in Article 182 paragraph (2) of the Manpower Law which states that the Manpower Supervisor who also functions as a Civil Servant Investigator (PPNS) conducts examinations on people suspected of committing labor crimes. on the other hand, in the concept of criminal enforcement in Indonesia, there is already a Police that has the authority to conduct non-criminal investigations as mentioned in the Code of Criminal Procedure (KUHAP). This is the attraction to research this topic. This research is important considering the need for law enforcement, especially since it was known in previous research that law enforcement for wage violations could not be carried out because there were constraints on facilities and parasana. [12] While other studies conclude that enforcement of Not a crime of employment that is often committed is a crime of wages. In the Manpower Law, the non-criminal provisions for wage crimes are still weak. [13] This study examines the enforcement of labor crimes on the payment of wages below the minimum wage.

2. Problems

- a. What are the legal consequences related to the criminal act of paying wages below the minimum wage regulated in the Manpower Law and the Job Creation Law?
- b. How is law enforcement against labor crimes in the field of wages for payments below the minimum wage?

3. Methods

This study used empirical juridical research methods, using primary and secondary data. Primary data were obtained through interviews with PPNS and secondary data by studying primary, secondary, and tertiary legal materials. Then it is described in an analytical descriptive manner.

4. Discussion

4.1. Legal consequences related to the criminal act of paying wages below the minimum wage regulated in the Law and the Job Creation Law

In general, wage practices should meet the concept of justice and not harm either party, both workers and employers. There are many forms of justice, ranging from fairness regarding working hours, justice regarding the amount of wages, justice in the portion of work, and justice in terms of other welfare guarantees. [14] However, there are still many wage practices in the field that are not by the rules so various problems arise that sometimes cause a sense of injustice for workers.

The payment of wages is based on an agreement reached between the two parties, but to regulate so that no payment is too low, the government gets around the regulation related to the minimum wage through legislation that has been set. The right to receive wages occurs when an employment agreement is established and ends when the agreement expires. In addition to being prohibited from providing wages under MSEs, the prohibition of different gender-based wages is also prohibited. Article 94 of the Manpower Law No. 13 of 2003 explains that the minimum basic salary component is 75% of the total basic salary and fixed allowances. The legal basis must exist as part of the wage system of contract workers. Conditions are one of the things that must be considered in the employment contract agreement for these workers. [15] Wages are one of the important elements in employment relations because wages are a source of income for workers/laborers to meet the needs of life and their families to achieve a decent degree of livelihood for themselves and their families. [3]

Wages are the rights of workers/workers received and expressed in the form of money as compensation from employers or employers to workers/workers determined and paid according to a work agreement, work agreements, or laws and

regulations including benefits for workers/laborers and their families for a job and/or services that have been or will be performed.

Article 88 paragraph (3) states that one of the wage policies in Indonesia is the minimum wage that must be set by the Governor. Thus, one of the rights of workers that must be regulated is the Provincial Minimum Wage hereinafter referred to as UMP. UMP is a minimum standard used by employers or industry players to provide wages that have been set in the province to workers in their business or work environment. [16] The minimum wage policy must refer to Article 27 paragraph (2) of the 1945 Constitution which states that everyone has the right to get a decent job and livelihood.[17]

The Provincial Minimum Wage is determined by the Governor by taking into account the recommendations of the Provincial Wage Board and/or the Regent/Mayor as stipulated in Article 89 of the Manpower Law. Further provisions regarding procedures for determining the minimum wage as referred to in paragraph (3) and certain conditions as referred to in paragraph (4) are regulated in Government Regulations.

Employers are prohibited from providing wages below the minimum wage stipulated by the local area. In addition to being regulated in the Wage PP, the Job Creation Law also stipulates that in principle employers are prohibited from paying workers wages lower than the minimum wage. On the other hand, employers are obliged to pay wages to workers by the agreement which must not be lower than the wage provisions stipulated in laws and regulations. The minimum wage also applies to workers with less than 1 (one) year of service at the company concerned. Meanwhile, the minimum wage is set based on an agreement between employers and workers. However, the implementation of UMP and MSE provisions is exempt for micro and small enterprises. [18]

Wages are very important for workers because one of the elements and characteristics of this labor/labor law is wages, in addition to the elements of orders and work, so it is important to be strictly regulated about the amount and method of payment including being paid in money at least 75% of the stipulated wages[19]. stipulated in the legal relationship of the parties, the government does not provide freedom for the parties to determine the amount except above the minimum wage. The purpose of government interference in determining wages is to provide legal protection to workers as a safety net so that employers do not set wages below the minimum living needs of workers.

Such a strong form of interference from the Government in the determination of wages, in addition to being determined by the government, there are also criminal sanctions for improper payment of wages. For example, suppose the employer does not pay by the agreed time or there is an element of negligence in paying it. In that case, it is threatened with a fine as specified in Article Article 88A paragraph (3): The employer must pay wages to workers/laborers by the agreement. This can be referred to Article 54 of the Manpower Law which specifies that the work agreement made at least contains the amount of wages and payment procedures. This is of course also related to the timing of payment so Article 88A is threatened with sanctions if it

is not by the agreement that has been made in the work agreement or collective labor agreement.

Then employers are obliged to pay wages that have been determined by the Governor as the minimum wage applicable in a region. The consequences of this obligation are threatened with criminal sanctions classified as criminal crimes as contained in Article 88E paragraph (2): Employers are prohibited from paying wages lower than the minimum wage.

So by Article 88A paragraph (3), it is clear that employers are obliged to pay wages to workers by the agreement where the agreement must not conflict with applicable laws and regulations as a form of responsibility for the services that have been provided by workers to employers by the agreed work. It is a prohibition for employers to pay wages lower than the minimum wage to workers for services rendered to employers for agreed work.

4.2. Law enforcement against labor crimes in the field of wages for payments below the minimum wage

To implement Article 185 of the Job Creation Law mentioned above and reduce the crime rate in labor in Indonesia, the Manpower and Transmigration Office, has the task of supervising, labor supervisory is an activity to supervise and enforce the implementation of laws and regulations in the field of labor. The labor supervision is carried out by competent and independent labor supervisory employees to ensure the implementation of laws and regulations in the field of labor.

Stages Legal steps that workers can take if employers pay wages lower than the minimum wage:

a. Bipartite Path

If in bipartite negotiations a settlement agreement is reached, then a joint agreement is signed by the parties.

b. Tripartite Line

If bipartite negotiations fail, tripartite negotiations can be carried out through mediation mediated by one / more neutral mediators. If the mediation is successful, then the result of the agreement is outlined in a collective agreement signed by the parties witnessed by the mediator, and registered in the Industrial Relations Court in the District Court. [20]

c. Industrial Relations Court Line

This path is carried out if negotiation efforts fail to reach a settlement agreement.

One of the law enforcement efforts in labor crimes can be carried out through investigations. Law enforcement in labor crimes aims to abolish the slavery system and keep the workforce more humanized. [21] Investigations in labor crimes are carried out by Labor Civil Servant Investigators, hereinafter abbreviated as PPNS Ketenagakerjaan. Regarding the authority of PPNS in Article 7 paragraph (2) of the Criminal Procedure Code, it is explained that PPNS has the authority by the laws that

form the basis of their respective laws, and in carrying out their duties are under the coordination and supervision of Police investigators or known as Korwas. Investigations in the field of labor are regulated in Article 182 paragraph (1) and Article 1 paragraph (12) of PP Number 36 of 202.

In the implementation of the investigation, the position and existence of Civil Servant Officials (PPNS) in the investigation can be seen in the provisions of Article 1 paragraph (1) of the Criminal Procedure Code, which states that the Investigator is a certain state police official of the Republic of Indonesia or PPNS who is given special authority by law to conduct investigations. Apart from the Criminal Procedure Code, the existence of PPNS as an Investigator is stated in Law Number 2 of 2002 concerning the National Police of the Republic of Indonesia and other laws and regulations that form the legal basis for each PPNS to conduct investigations,

In Article 1 paragraph (2) of the Code of Criminal Procedure, investigation is a series of actions of investigators in terms and according to the manner provided for in this law to search for and collect evidence that with this evidence makes light of the crime that occurred and to find the suspect.

Laws and regulations on labor want to realize the goals of the Government of the State of Indonesia and realize a prosperous, just, and prosperous Indonesian society based on Pancasila and the Constitution of the Republic of Indonesia Year 1945, the State needs to make various efforts to fulfill the rights of citizens to work and decent livelihood for humanity, but in the fact that at this time there are still many employers who pay wages to workers or laborers below the provincial minimum wage, this can be seen from the decisions quoted from the Directory of Decisions of the Supreme Court of the Republic of Indonesia and reports received by PPNS Employment regarding labor crimes in the field of wages. The decisions on cases related to criminals in the field of wages as quoted from the Directory of Decisions of the Supreme Court of the Republic of Indonesia are as follows:

The reports received by PPNS Employment from 2019 to 2023 are as follows:

- a. In 2019, Zulfikri reported PT. Gunung Pulo Sari for the payment of wages below the minimum wage starting from 2015-2019, where PT. Gunung Pulo Sari pays wages to workers of Rp 1,515,000 (one million five hundred and fifteen thousand rupiah);
- b. In 2021, Randi Rifdanil reported PT. Center Park Atra CCRRA for the payment of wages below the minimum wage, where the wages paid are Rp 1,500,000 (one million five hundred thousand rupiah) and related to overtime wages that are not provided by PT. Center Park Atra CCRRA;
- c. In 2022, Riza Lesmana reported PT. Mutiara Rejeko Nusantara for wages that have not been paid for 4 (four) months;
- d. In 2022, Herlldes reported PT. Grafika Jaya West Sumatra for wages and THR not paid in 2020, wages laid off in 2021 that have not been paid, and severance pay;

- e. In 2023, Andi Kristian reported The Axana Hotel on wages paid during 2018-2023 under UMP; and
- f. In 2023, Noni reported PT, Tiga Putra for wages paid not by work results and wages paid under UMP

The report received by PPNS Employment mentioned above is completed only with the bipartite stage and rarely reaches the investigation stage. Bipartit is one way to get a win-win solution where employers and workers/workers get a middle way for the problems they face so that there is no loss from either party, but that does not mean that the success of the bipartite path makes employers a deterrent and with the lack of settlement through the court, it makes a lack of worry for employers who make wage payments below UMP because this can make employers underestimate the payment of wages below UMP.

The position of labor law in the national legal system is divided into 3 fields, namely the administrative field, the civil sector, and the criminal field. [22] Enforcement of labor law takes place through 3 stages, namely preventive, educational, repressive, non-judicial, and repressive, judicial. The judicial repressive stage is carried out through the investigation process by PPNS Ketenagakerjaan in the manner regulated in the criminal procedure law. Based on Lawrence M Friedman's legal system theory, factors that cause labor criminal law enforcement to be ineffective, including legal structure factors, namely misperceptions from both law enforcement officials and related parties causing labor law enforcement to be less than optimal, legal substance factors that in the Manpower Law still do not regulate all crimes that occur against workers which are criminal offenses, And the legal culture factor that workers have not been able to distinguish between disputes and criminal labor violations and trade unions less carefully position cases between disputes or violations to prioritize cases of disputes rather than violations.[22]

The Code of Criminal Procedure confirms that the Investigator is an official of the National Police and PPNS who is given special authority by law. In Article 182 of Law No. 13 of 2003 concerning Manpower, it is determined that all investigators of officials of the National Police of the Republic of Indonesia, as well as employees of labor supervisors can be given special authority as investigators of civil servants by applicable laws and regulations. Who is authorized to conduct examinations, on suspicion of criminal acts in the field of labor?

Based on the results of an interview that the author conducted with Ali as PPNS Diskanertrans Kota Padang, explained that investigation is part of law enforcement, and supervision is coaching which has been included in law enforcement, it's just still in the realm of education. [23]

In violation of labor law, PPNS Ketenagakerjaan will not directly investigate violators of the law. The resource person stated that PPNS Employment will conduct guidance by the Regulation of the Minister of Manpower Number 33 of 2016 concerning Procedures for Labor Supervision[24]. One of the implementations of Labor Supervision is by conducting coaching. In Article 17 paragraph (2) of Regulation Number 3 of 2016, such guidance can be carried out through technical

advisory activities, socialization, training, consultation meetings, discussions, and mentoring. [24] Article 18 of Regulation 3 of 2016 also explains that the guidance can be carried out to employers, workers/laborers, trade union/labor administrators, administrators of employers' organizations, and/or other related parties.

After coaching, the next stage is examination. PPNS Keketenagakerjaana has the authority to conduct routine checks every month. Philipus M. Hadjon suggests that the term authority or authority is aligned with *bevoegheid* But it has differences in character. *Bevoegheid* used in public law and private law, while authority is always used in public law. Thus authority is parallel to *bevoegheid* in public law. [25]

In an interview with the resource person, Yulita as PPNS Disnakertrans Kota Padang, explained that findings related to criminal acts committed by employers were not only obtained from reports, but also the results of routine checks carried out every month, although PPNS Employment also received reports related to criminal acts in the field of labor, the resource person emphasized that criminal acts in the field of labor were included in ordinary offenses. The resource person also explained that the routine inspection was carried out by Article 20 of Regulation Number 3 of 2016 consisting of 4, namely the first inspection, periodic examination, special examination, and re-examination. The re-examination is carried out based on the results of the evaluation or inspection report by the head of the labor supervision work unit which is carried out after a special degree is carried out. [24]

The purpose of the special degree is to obtain input for alignment or improvement in filing and to submit information/reports for monitoring the progress of investigations and managing the process of handling cases. The title of the case can be carried out at the pre-investigation stage, the investigation stage, and / or the final stage of investigation, based on the submission of the case title by:

- a. The investigation team, if needed, to obtain input for alignment or improvement in the filing;
- b. The supervisor of the investigation team, if necessary, to obtain information/reports for monitoring the progress of the investigation and managing the case handling process; and
- c. The public prosecutor (JPU), if necessary, obtains an overview of the case being handled and provides instructions for the fulfillment of evidence on the elements of the alleged article.

The participants of the case title include the following:

- 1) The investigation team consists of a coordinator as presenter and a member;
- 2) The supervisor of the investigation team;
- 3) Related parties to handle cases; and
- 4) Public prosecutor.

Case title material includes case chronology, case anatomy, linkage matrix, evidence, actions that have been taken, obstacles or obstacles, actions to be taken, and

suggestions or opinions. After the case title is carried out, the results of the implementation of the case title will be made with minutes signed by the participants of the case title and used as a guide for the investigation team to solve the case handling.

Procedures for Labor Supervision states as follows: [24]

- a. In conducting an examination, if a deficiency in the fulfillment of workers' rights is found, the labor supervisor must calculate and determine, the lack of fulfillment of the rights as intended including:
 - 1) Lack of payment of minimum wages
 - 2) underpayment of overtime pay, and
 - 3) Calculation of the amount of work accident insurance benefits, if there are differences of opinion between the parties or workers, who have not been registered as participants in the employment social security program.
- b. The calculation and determination as referred to in paragraph (1) are first carried out by the Manpower Supervisor in the regional labor supervision work unit.

If there is a finding of payment of wages below the minimum wage to workers, the PPNS Employment will make an inspection note, where the inspection note consists of inspection note I and inspection note II. The period for making the inspection note I is carried out for a maximum of 3 (three) days, whereas in the inspection memorandum I the Employment PPNS gives a time limit of 5 (five) to 30 (thirty) days to the employer where the time limit given by the Employment PPNS depends on how difficult the violation is resolved. since the inspection memorandum I was received during the granting of the memorandum I, PPNS Employment continues to monitor the entrepreneur, whether the company has good faith or not to resolve violations related to criminal acts that have been committed by the employer by the violated article. If the deadline on the inspection note I have been completed and there is still no good faith for the employer to resolve the problem, then the Employment PPNS provides an examination note II to the employer with a time limit of 5 (five) to 30 (thirty) days to the employer where the time limit given by the Employment PPNS depends on how difficult the violation is resolved. The purpose of PPNS Employment is to provide an examination note I and an examination note II to the employer so that the employer has good faith to solve problems that exist between employers and workers, where the employer is obliged to provide or pay all obligations that should not be given by the employer during the worker's work.

After the examination memorandum II is deemed to have failed, PPNS Employment can make an Event Report commonly referred to as LK, when the LK has been carried out, a degree is carried out where at the time the title is carried out, a letter of assignment is derived which is useful for the investigation to take place, then the case will proceed to the investigation stage.

In the event of the commencement of an investigation, PPNS must first notify the commencement of the investigation public prosecutor through a National Police investigator with a notice of commencement of investigation (SPDP), unless the law specifies otherwise. SPDP must be attached with [23]

- a. Event reports;
- b. Investigation warrant; and
- c. Minutes that have been created.

After the SPDP is examined for completeness, the SPDP is forwarded by the Police Investigator to the public prosecutor with a letter of introduction from the Police investigator. Before the notification of the start of the investigation, If the SPDP has been received by the National Police investigator, the Police investigator must prepare the investigation support requested by PPNS. The support is coordinated in advance with PPNS. At the time of the investigation, the investigator is obliged to submit the results of the investigation to the public prosecutor, but if at the time of the investigation, the employer has given good faith and has paid his obligations to the worker, the PPNS Employment can stop the investigation using notification to the public prosecutor and a copy is submitted to the investigator of the National Police of the Republic of Indonesia because considering the purpose of the Manpower Service is not to carry out arrest but aimed at making the rights of the worker pay off. [23]

In principle, the general system of fixed wages is intended to reduce the exploitation of workers. The determination of the Provincial Minimum Wage (UMK) is the government's obligation to ensure labor protection. There is a rule that employers are prohibited from paying wages below the minimum wage, in terms of setting the minimum wage there should be one party who will supervise each company. With this framework, it is hoped that no more companies will adopt wages below the minimum wage. However, if there is a company that is unable to pay based on the corrected UMP, he also has the right to request the suspension of the application of UMP or UMK against the company. In addition, requests for termination of agreements between employers, union workers, and workers must be in writing. The suspension must also be accompanied by prior written consent. Financial statements of the company, balance sheet, calculation of profit and loss for the past two years. Then a copy of the deed of incorporation. In case of financial problems, the company can postpone the salary for up to 1 year. In addition, the salary must be adjusted according to applicable regulations if 12 months have passed. In a regulation that has been established, the importance of law enforcement and supervision is a factor that can affect the success of the implementation of the regulation. The regulations of the Job Creation Law regulate the obligation to pay wages based on not less than the provisions of UMP and UMK in a region. [26]

5. Conclusion

Law enforcement against violations committed by employers for the payment of wages below the general public is carried out by PPNS Ketenagakerjaan which also

functions as a supervisor and supervisor of employment. if violations are found in the implementation of regulations, especially wages, then the PPNS conducts investigations in coordination and under the supervision of the Korwas Polda.

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