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The Arrangements for Implementation of State Administrative Courts Decisions in Indonesia Based on Justice Value

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ABSTRACT: In the Indonesian constitution it is stated that the State of Indonesia is a state of law, this is evidenced by the existence of a State Administrative Court which aims to prevent abuse of the authority of public officials, but the implementation of the PTUN decisions does not yet have firmness because there is no coercive effort for public officials who are declared wrong in implementing the policy. The purpose of this study is to analyze and explain the regulations as well as the execution of the decisions of the State Administrative Court that apply in Indonesia and analyze the weaknesses that affect the execution of the decisions of the State Administrative Court. The method in this is non-doctrinal, using primary data obtained by conducting interviews and secondary data by conducting a literature study, the results of the research are then analyzed using qualitative descriptive methods. Because Law Number 51 of 2009 concerning the State Administrative Court confirms not to carry out the execution of the PTUN decision. The weakness lies in the legal substance of Article 97 number (9) of the Law of the Republic of Indonesia Number 51 of 2009 concerning the State Administrative Court, which has not regulated threats to officials who do not carry out the provisions as stated in the decision of the State Administrative Court. And the weakness in Article 116 has not regulated the amount of forced money sanctions. While the legal structure factor is the absence of further legal remedies because the implementation of the PTUN decision depends on the awareness of the relevant officials. These weaknesses have led to a loss of public confidence in the PTUN decision, so it is necessary to reconstruct Article 97 point (9) and Article 116 of the Law of the Republic of Indonesia Number 51 of 2009 concerning the State Administrative Court.

KEYWORDS- Execution, administrative court, decision, reconstruction, law

I. INTRODUCTION

The 1945 Constitution of the Unitary State of the Republic of Indonesia is a derivation or elaboration of the values contained in Pancasila. This can be proven by Kaelan's explanation regarding the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia [1].

According to Kaelan, the first point in the Preamble to the 1945 Constitution of the Republic of Indonesia is the elaboration of the third principle of Pancasila. This opinion can be seen from the statement in the first main idea which explains that the Indonesian state is a unitary state, namely a state that protects the entire nation and the entire homeland of Indonesia, overcoming all understandings of groups and individuals.

Legal politics based on the value of God Almighty means that legal politics must be based on the moral value of God. Legal politics based on just and civilized human rights means that the existing legal politics must be able to guarantee respect and protection for human rights in a non-discriminatory manner. Legal politics must be based on the value of Indonesian Unity, meaning that legal politics must be able to unite all elements of the nation with all their primordial ties. Legal politics based on populist values led by wisdom in deliberation/representation means that legal politics must be able to create state power which is under the power of the people or in other words legal politics must be able to create a democratic country where the greatest power is in the hands of the people (democracy) [2].

Then with regard to the purpose of law, Sri Endah Wahyuningsih suggested that: if what national law aspires to is the Pancasila legal system, then it is appropriate to study and develop laws that contain Pancasila values, meaning laws that are oriented to the value of the One Godhead, laws that oriented to just and civilized human values, laws based on the value of Unity, and laws that are imbued with popular values led by wisdom in deliberation/representation and the value of social justice for all Indonesian people. Then legal politics must also be based on the value of Social Justice for All Indonesian People, meaning that legal politics must be able to create a socially just society that is able to create justice for the weak community both in the social sector and in the economic sector, so that there is no oppression between the people [3].

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Pancasila is the foundation and source of all sources for national legal politics. This is because Pancasila and the Preamble to the 1945 Constitution of the Unitary State of the Republic of Indonesia contain various ideals of the Indonesian nation, which are rechtsidee, namely to create a state capable of creating social justice based on the moral values of God, Humanity, Unity through mutual cooperation, not democracy. Through western democracy. In order to realize these various things, it is necessary to have a concept of guaranteeing the implementation of law in this country in the context of a state based on law as intended in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia.

One of the means of implementing the concept above is the Legal Regulations related to the State Administrative Court. Enrico Simanjuntak stated that in a democratic legal state, the function and position of the state administrative judiciary cannot be ruled out, let alone abolished, the existence of administrative justice is a condition sine quo non for the fulfillment of the status and legitimacy of the rule of law. The important position of the State Administrative Court or the state administrative court in Indonesia is due to its position as a check and balance or prevention and supervisor of the abuse of functions in governance and state administration in Indonesia [4].

Administrative law on the one hand guarantees the realization of a balance of state power and includes the relationship between relevant state institutions and on the other hand guarantees harmonization between the functions and duties of the state with the ideals of the nation, it is also clear that administrative law is a medium for the realization of the concept of limiting power as core of a constitutional democracy.

In its development, administrative law was born as a result of the community's need to guarantee the implementation of a just and democratic state and government. Administrative law is also born from the need for restrictions on state and government power over the community in order to avoid abuse of authority which will ultimately sacrifice the interests of the community [5].

In essence, human rights which are the goals of a rule of law which are clearly regulated in the state constitution can be realized by limiting power which can be guaranteed by the implementation of a just State Administrative Court. This is because the Administrative Court is an effective means of ensuring legal equality between the government and the community as evidenced by the existence of public lawsuits against government actions that are considered detrimental.

However, with various weaknesses in the regulation of Law Number 51 of 2009 concerning State Administrative Courts, the concept of a state of law in this country is very difficult to realize properly. This can be seen in the provisions related to the implementation of the TUN Court decisions in Indonesia. Article 116 of Law Number 51 of 2009 states that:

(1) A copy of the court's decision which has obtained permanent legal force, shall be sent to the parties by registered letter by the local court clerk at the order of the head of the court that tried him in the first instance within 14 (fourteen) working days at the latest.

(2) If after 60 (sixty) working days the court decision which has obtained permanent legal force as referred to in paragraph (1) is received by the defendant not carrying out his obligations as referred to in Article 97 paragraph (9) letter a, the disputed state administrative decision it has no legal force anymore.

(3) In the event that it is determined that the defendant must carry out the obligations as referred to in Article 97 paragraph (9) letters b and c, and then after 90 (ninety) working days it turns out that these obligations have not been carried out, the plaintiff shall submit an application to the chairman of the court as referred to in paragraph (1). in paragraph (1), that the court orders the defendant to implement the court's decision.

(4) In the event that the defendant is not willing to implement a court decision which has permanent legal force, the official concerned shall be subject to coercive measures in the form of payment of a certain amount of forced money and/or administrative sanctions.

(5) Officials who do not carry out court decisions as referred to in paragraph (4) are announced in the local print mass media by the clerk since the provisions as referred to in paragraph (3) are not fulfilled.

(6) In addition to being announced in the local printed mass media as referred to in paragraph (5), the head of the court must submit this matter to the President as the holder of the highest government power to instruct the official to carry out the court's decision, and to the people's representative institution to carry out the supervisory function.

(7) Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for implementing forced payments and/or administrative sanctions are regulated by laws and regulations.

Based on the above provisions, it is clear that there is no rational coercion against the implementation of a TUN judicial decision. As for the other alternative to coercive implementation of the PTUN decision as referred to in Article 116 paragraph (4) of Law Number 51 of 2009 as described above also does not largely include the amount of fines and the mechanism for implementing the existing fines. This has clearly violated the goals of the state and the concept of the rule of law as described above, especially in terms of creating checks and balances and controlling the power of the state government in order to realize equality between the government and society in order to realize a fair respect for human rights in Indonesia [6].

This issue can be seen clearly in Case Number 1/P/FP/2017/PTUN. BJM related to the application for splitting the certificate of land ownership with No. 1824 which occurred in April 2017. In this decision, the Administrative Court judge granted the petition

and won the petitioner who wanted to split the certificate but was not paid attention or was not granted by the Head of the Banjarmasin Land Agency.

Furthermore, on the basis of the above problems, a letter of application was finally submitted to implement the PTUN decision as described above. However, this was also not carried out because the Head of the Banjarbaru City Land Office was also not willing to carry out the PTUN decision mentioned above. Based on the case, it is clear that the provisions of Article 116 of Law Number 51 of 2009 are unfair in terms of implementing the execution of the PTUN decision. This is clear in the case of Violation of the Administrative Court Decision by the Head of the Banjarmasin BPN, the results of the Observation and Indebt Interview at the Banjarmasin Administrative Court which was held on April 12, 2019. It has violated the Second Precepts of Pancasila as well as the Fifth Precepts of Pancasila and also the Fourth Paragraph of the Preamble to the 1945 Constitution of the Republic of Indonesia and specifically automatically violates Article 28D paragraph (1) of the 1945 Constitution of the Republic of Indonesia [7].

These various violations have clearly violated the PTUN principles, namely the principle of equality before the law, the principle of harmony, harmony and balance, and the principle of erga omnes. The violation of the principles of the TUN Procedural Justice is clearly also contrary to the preamble to Law Number 51 of 2009 which states that judicial power is an independent power to administer justice to uphold law and justice so that it is necessary to realize a clean and authoritative judicial institution in fulfilling a sense of justice in society.

II. RESEARCH OBJECTIVES

1. To know and analyze the current regulations for the execution of decisions of the State Administrative Court in Indonesia.
2. To analyze the weaknesses of the Regulation on Execution of Decisions of the State Administrative Court in Indonesia which is not based on the value of justice.

A. Research Method

The method used in this research is a sociological/non-doctrinal juridical approach, with primary and secondary data sources, namely data obtained by conducting interviews with judges at the State Administrative Court, as well as state officials who have had litigation, and equipped with digging up bibliographic data. Secondary data include:

1. Primary legal materials, namely binding legal materials consisting of the basic norms of Pancasila, the 1945 Constitution, MPR stipulations, laws and regulations, jurisprudence and so on.
2. Secondary legal materials, namely legal materials that are closely related relation to primary legal materials and can help analyze and understand legal materials the primer. For example, court decisions, research results of related experts, works of legal experts (relevant books), results of scientific meetings (seminars, symposiums, discussions) and others.
3. Tertiary legal materials that will provide information/explanation instructions on primary and secondary legal materials, such as legal dictionaries, indexes and others.

The data obtained were then analyzed by descriptive analytical method.

III. RESEARCH RESULTS

Execution Regulations of State Administrative Court Decisions That Are Not in Accordance with the Value of Justice Execution or implementation of court decisions is a forced action taken by the Court to the losing party to implement a decision that has permanent legal force. The existence of the execution of the decision is intended as a form of realization of achievements for the parties listed in the decision to carry out the obligations as stated in the ruling. The execution of PTUN decisions in particular is regulated in Article 115 of Law no. 5 of 1986 jo. UU no. 51 of 2009 reads "Only Court decisions that have obtained permanent legal force can be implemented" [8].

While Article 116 of Law no. 5 of 1986 jo. UU no. 51 of 2009, namely:

(1) A copy of the Court's decision which has obtained permanent legal force, shall be sent to the parties by registered letter by the local Court Registrar at the order of the Chief Justice of the Court who tried him in the first instance within fourteen working days at the latest.

(2) If after 60 (sixty) working days the court decision which has obtained permanent legal force as referred to in paragraph (1) is received by the defendant not carrying out his obligations as referred to in Article 97 paragraph (9) letter a, the disputed state administrative decision it has no legal force anymore.

(3) In the event that it is determined that the defendant must carry out the obligations as referred to in Article 97 paragraph (9) letters b and c, and then after 90 (ninety) working days it turns out that these obligations have not been carried out, the plaintiff shall submit an application to the chairman of the court as referred to in xxv referred to in paragraph (1), so that the court orders the defendant to implement the court's decision.

(4) In the event that the defendant is not willing to implement a court decision that has permanent legal force, the official concerned shall be subject to coercive measures in the form of payment of a forced amount of money and/or administrative sanctions.
(5) Officials who do not carry out court decisions as referred to in paragraph (4) are announced in the local print mass media by the clerk since the provisions as referred to in paragraph (3) are not fulfilled.
(6) In addition to being announced in the local printed mass media as referred to in paragraph (5), the head of the court must submit this matter to the President as the holder of the highest government power to instruct the official to carry out the court's decision, and to the people's representative institution to carry out the supervisory function.
(7) Provisions regarding the amount of forced money, types of administrative sanctions, and procedures for implementing forced payments and/or administrative sanctions are regulated by laws and regulations.

Based on the clause of Article 115 of Law no. 5 of 1986 above, it is known that the PTUN decision which is final and erga omnes has binding legal force for the disputing parties, so that the decision made by the judge becomes mandatory for the losing party. As for what is meant by a decision that has permanent legal force, it is a decision which is certain by itself having binding force [9].

According to Martiman, permanent legal force is a court decision that already has absolute power and can be executed or the decision has executive power. More rigidly, what is meant by permanent legal force is referring to an agreement to submit a dispute by the parties to the court for examination and trial.

This condition implies that the person concerned will submit and obey the decision handed down by the judge. The decision that has been handed down must be respected by both parties. Neither party may act contrary to the decision. Meanwhile, the clause in Article 116 paragraph (2) of Law no. 5 of 1986 jo. Law No. 51 of 2009 stipulates that the time limit for implementing the PTUN decision is 60 (sixty) days after it was decided by the court that it was sent to the defendant. In the event that during this 60 (sixty) period the defendant does not implement the court's decision, the disputed State Administrative Decision (KTUN) is considered to have no legal force anymore [10].

The purpose of this clause is to protect the interests of the Plaintiff by revoking the legal force of the disputed State Administrative Court. Furthermore, Article 116 paragraph (4) to paragraph (6) of Law no. 51 of 2009 accommodates the form of legal protection for the Plaintiffs after the revocation of the legal force of the disputed KTUN. This form of legal protection is the realization of the implementation of guaranteeing the rights of the plaintiffs that must be fulfilled by the defendants facilitated by the Administrative Court by:

a. Imposing coercive measures in the form of payment of a certain amount of forced money and/or administrative sanctions; The forced money (dwangsom/astreinte) referred to here is an additional punishment for the debtor to pay a certain amount of money to the debtor. In this case, Marcel Stome argues that: Forced money (dwangsom/astreinte) is an additional punishment for the debtor to pay a certain amount of money to the debtor, in the event that the debtor does not fulfill the basic penalty.
b. Which additional punishment is intended to pressure the debtor so that he fulfills the main sentence). Referring to the above definition, dwangsom can also be said as a form of reparatory administrative sanctions. Reparatory sanctions mean sanctions that are applied as a reaction to the violation of norms, which are aimed at returning to the original condition before the violation occurred. Thus, the existence of dwangsom is basically intended to obtain a concrete situation that is in accordance with the norm. Basically, the implementation of the dwangsom model has become part of law enforcement for the execution of the Administrative Court decision in France [11].
c. Dwangsom is applied in the event that the agency or official is late in carrying out the execution so that they are given sanctions and threats by paying money on a daily basis. The longer the defendant carries out the execution of the decision, the greater the amount of dwangsom that must be paid. In addition to paying the dwangsom, the relevant body or official will receive a reprimand from the Conseil D'Etat as a very influential court in France. If the dwangsom and reprimand from Conseil D'Etat are not heeded, then the relevant agency or official has the potential to be boycotted or rejected for submitting a budget plan [12].
d. Announce TUN officials who do not implement court decisions in the print media; Announcement of TUN officials who did not implement the TUN court decisions in the print media was part of the development of the execution of the Administrative Court decisions in the second phase (2004-2009) after the amendment of Law no. 5 of 1986. In its implementation, official announcements in local print media can be carried out by referring to the JUKLAK MA RI No. 2 of 2005. The existence of TUN officials' announcements in the print media is basically intended as a reminder for the TUN officials to execute the PTUN decisions. The act of announcing the unwillingness of State Administration Officers to execute the Administrative Court decisions in the print media will worsen the branding of the officials as well as the relevant State Administration Institutions. This is because the main function of press relations is to seek maximum publication or broadcasting of a message or public relations information in order to create knowledge and understanding for the audience of the company's organization concerned. The purpose of media relations is to disseminate information and gain public trust so that achieve individual and

organizational goals. In this case, the purpose referred to by the PTUN is to force the TUN officials to immediately carry out the execution of the PTUN decision through mass power. The main target emphasized is the image of the relevant TUN institutions, where the formation of a strong image requires good public opinion between the organization and its public must also be built properly. Therefore, the purpose of this announcement is none other than to emphasize the image of the relevant TUN institutions to the public [13].

e. Reporting the actions of TUN officials who do not carry out court decisions to the President as the holder of the highest government power. The act of reporting the TUN officials to the President is seen as the last alternative to force the TUN officials to carry out the execution of the PTUN decisions which have permanent legal force (in kracht van gewijsde).

This provision refers to the imposition of the completion of the execution to the President as the person in charge of the highest government affairs to instruct officials who are burdened with the obligation to carry out the PTUN decision which has permanent legal force. This condition is motivated by the task given by Article 4 paragraph (1) of the 1945 Constitution of the Republic of Indonesia which states that the President of the Republic of Indonesia holds governmental power according to the Constitution. In this case, the President is responsible for the government he leads, so that in principle it is the President who has the authority to form a government, arrange a cabinet, appoint and dismiss Ministers and public officials whose appointments and dismissals are based on political appointments. Above the president, there is no other higher institution, except the constitution. Therefore, in the constitutional state system, politically the president is considered responsible to the people, while legally he is responsible to the constitution. 15 The three actions are a form of norm renewal from the clauses of Article 116 paragraph (4) to paragraph (6) of Law no. 5 of 1986 which did not accommodate any form of legal protection for the plaintiff after the revocation of the legal force of the disputed State Administrative Court. Thus, the legislator's steps in adding to these coercive measures show progressiveness in law enforcement, especially the enforcement of TUN law in Indonesia [14].

Furthermore, the existence of the above coercive measures is necessary because not all TUN officials are willing to obey and implement the PTUN decision. The forced effort is a solution to resolve the case of the execution of the TUN decision because the implementation of the PTUN decision does not allow the involvement of law enforcement officers. In this case, the intervention of the President as the head of government is the best way to take action against TUN officials who do not want to implement the PTUN decision. In the context of following up on coercive measures as referred to in Article 116 of Law No. 51 of 2009, through Article 116 paragraph (7) it is explained that the provisions for coercive measures above must be further regulated in laws and regulations. The statutory regulations referred to here are implementing regulations (delegated legislation). Unfortunately, up to ten years since Law no. 51 of 2009 was issued, there are no implementing regulations that detail the procedures for implementing coercive measures, including administrative sanctions, announcements in printed mass media, and reports to the president. Such conditions result in the imposition of forced sanctions as if they have no legal force. Even though a revision has been made to the provisions of Article 116, several problems have arisen in terms of the implementation of forced money payments (dwangsom), which include:

a) There is no legal product that regulates the procedures and mechanisms for the payment of forced money as is the case with Government Regulation Number 43 of 1991 concerning Payment of Compensation in the State Administrative Court;
b) The deadline can be determined by the amount of forced money to be paid; and
c) To whom the forced money must be charged, whether to the finances of the relevant state administration official or to a private official who is reluctant to implement the Administrative Court decision.

This is because if the payment of forced money (dwangsom) in connection with the implementation of the execution of the decision of the State Administrative Court is implemented, Indroharto asserts that even if forced money is applied, it must be remembered that:

1) Property used for the public interest cannot be placed in a confiscation of execution;
2) Obtaining the power to carry out itself at the expense of the government (executed parties) would be contrary to the principle of legality which says that doing or deciding something based on public law can only be done by the State Administration Agency or Position that is authorized or based on on a statutory provision.
3) Seizing the freedom of people who are holding government positions as a means of coercion will result in severe reflections on the running of the government;
4) The government is always considered able and able to pay solvable.

In addition to the issue of the application of forced money, the imposition of administrative sanctions for state administrative officials who do not implement the decision of the Administrative Court which has permanent legal force has resulted in several problems including:

a) Types of administrative sanctions applied;
b) Basic regulations on administrative sanctions such as what can be used as a reference;
c) What is the form of mechanism and procedure for the application of administrative sanctions that must be applied?

The issue of administering administrative sanctions also needs to be studied carefully in order to be able to cover the losses by the plaintiffs due to the non-implementation of the Administrative Court decision by the TUN officials. In this case the imposition of administrative sanctions must be carefully studied the facts of the violation of the law. Basically the imposition of administrative sanctions can be applied to two types of violations, namely: 1) Violations that are not substantial; and 2) Substantial violations. The imposition of sanctions for violations that are substantial and non-substantial in nature can be not the same. The statement above at least gives an illustration that although legislators have added coercive measures and administrative sanctions as a form of legal protection for the plaintiffs, in fact the two additional sanctions are not yet strong enough to bully TUN officials into implementing the TUN decisions. In other words, the clauses in Article 116 paragraphs (4) to (6) of Law no. 5 of 1986 jo. Law No. 51 of 2009 cannot be implemented (non-executable) [15].

Such conditions can certainly reduce the function of PERATUN. Where should be able to encourage the realization of a clean and authoritative government, namely the creation of an atmosphere of attitude that is not from the elements of the State that is enforcement of problems that are legally flawed. This is due to the decision of the TUN Court, whose legal considerations and dictum contain a statement that a KTUN is considered invalid as a violation of applicable laws and/or general principles of good governance (AAUPB), should be able to provide encouragement to the government, namely the agency or official. state administration to improve the system and its performance in carrying out government functions in order to realize a clean and authoritative government (clean and strong government) [16].

The State Administrative Court as an institution seeking legal protection for the people is often unable to provide satisfaction to the people as justice seekers for the victory they have won in a case, which is because the formulation of norms governing execution in the Administrative Court Law still has a level of weakness so that it often also encountered problems in the execution. That because of the weak norms governing executions, this is often used as an excuse by TUN officials not to heed the TUN Court Decisions.

In addition to reducing the function and image of the TUN judiciary before the government, there are obstacles that arise due to incomplete regulations that serve as legal umbrellas in implementing the Administrative Court decisions, such as:

a) The system offered by the administrative procedure law in enforcing the implementation of decisions is based on the pattern of "moral compliance or legal awareness" (law awarenees), not on the pattern of "juridical compliance".
b) The enforcement system for implementing decisions is not placed in a system that ends or is supported by a penetration as is appropriate in civil or criminal courts equipped with instruments that can force the Defendant/Official to comply with or implement the decision.
c) The system for implementing compensation as regulated in PP No. 43 of 1991 and the Decree of the Minister of Finance of the Republic of Indonesia No. 1129/KM.01/1991 concerning Procedures for Payment of Compensation, the implementation of Administrative Court Decisions is very complicated and constitutes a rubber article because it is possible for payment of compensation to be delayed for several fiscal years.
d) Juridically there is no balance between the plaintiff and the defendant, where the bargaining position of the plaintiff is very weak when the defendant/official does not comply with the decision. In addition to the juridical constraints above, there are also conflicting principles that make it difficult to implement the Administrative Court decisions due to the implementation principle of execution which is universally adopted by various countries, where the revocation or amendment of a decision can only be made by the official himself (contrarius actus principle).

In connection with the application of this principle, the defendant used the opportunity to delay or even not carry out the revocation of the decision ordered by the court. Based on the application of the contrarius actus principle, no other official is authorized to carry out the revocation, except himself, so that the revocation cannot be completed by anyone except the defendant himself [17].

IV. CONCLUSIONS

The execution of the decision of the State Administrative Court at this time has not realized the value of justice, this is because the existence of 116 Laws of the Republic of Indonesia Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court does not expressly provide certainty. themselves not to carry out the execution of the Administrative Court decision. Inhibiting factors and factors that influence the implementation of the unjust execution of PTUN is the factor of legal substance, namely the provisions of Article 97 number (9) of the Law of the Republic of Indonesia Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning State Administrative Courts which have not regulate threats to officials who do not carry out the provisions as determined by the State Administrative Court. As well as the weakness in Article 116 of the Law of the Republic of Indonesia Number 51 of 2009 concerning the Second Amendment to Law Number 5 of 1986 concerning the State Administrative Court that has not regulated the amount of forced money sanctions, it should be regulated more clearly in this provision.

OTHER RECOMMENDATIONS

The State Administrative Court is more progressive in making decisions regarding the execution of the decisions of the State Administrative Court relating to the execution. For State Administrative Officers, it is necessary to be able to make legal breakthroughs based on the values of Pancasila and based on the progressiveness of the PTUN procedural law.

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