

Reconstruction of Criminal Law Policy for Children From a Restorative Justice Perspective in Indonesia

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Abstract

Based on Law No. 11 of 2012 concerning the Juvenile Criminal Justice System, the concept of restorative justice is adopted, which is realized through diversion efforts. Restorative Justice is a model for resolving criminal cases that prioritizes the restoration of victims, perpetrators, and the community. The goal of restorative justice is the participation of victims and perpetrators, the participation of citizens as facilitators in resolving cases, so that there is a guarantee that children or perpetrators will no longer disrupt the harmony that has been created in society. This study aims to analyze the policy of juvenile criminal law and how restorative justice works. This study uses normative research types and secondary data sources as well as legislative approaches and case approaches. Based on the results of the study, the criminal law policy towards children as perpetrators of crimes in Indonesia is specifically regulated through Law No. 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). This regulation aims to provide special protection, guarantee the future of children, and prioritize a restorative justice approach (recovery) over retaliation. Restorative justice for children in conflict with the law is the resolution of criminal cases that emphasizes restoration to the original state rather than retaliation. This approach must be prioritized in the justice system to restore social balance and avoid negative impacts or stigma on the future of children. Reconstruction of child criminal law policy in Indonesia is crucial to shift the paradigm from retributive to restorative. This approach focuses on resolving cases involving victims, perpetrators, families, and the community to achieve dialogue, responsibility, and peace.

Keywords: Criminal Law Policy, Restorative Justice, Children.

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Introduction

Under the juvenile criminal justice system, children in conflict with the law, whether they are perpetrators or victims, often face rigid legal procedures and lengthy timeframes. Justice must be upheld, and the child's best interests must be prioritized to ensure the resolution of juvenile criminal cases. These factors underpinned the establishment of the Juvenile Criminal Justice System, which focuses not only on imprisonment but also on the concept of restorative justice through diversion, which involves transferring juvenile cases from the criminal justice process to a process outside the criminal justice system.

However, recently, we have seen numerous cases of children in conflict with the law, both as perpetrators and as victims. For example, the bullying case that is currently widespread and has become a hot topic on social media, where the perpetrator is still categorized as a child under the Juvenile Criminal Justice System Law because he is 12 years old but not yet 18. This has raised public concern about whether this restorative justice system through diversion can be an appropriate solution and provide a sense of justice for both perpetrators and victims. In criminal law, there is an opinion that a person cannot be punished for committing a crime, if before he committed the crime there was no law stating that the crime he committed was threatened with punishment (*Nullum Delictum, Nulla Poena Sine Praevia lege Poenali*). This principle is contained in Article 1 paragraph (1) of the Criminal Code. The application of criminal penalties that are commonly based on the Criminal Code (KUHP) does not educate children to be better, but can worsen conditions and can increase the level of child crime. This is due to the paradigm of law enforcement officers who consider the child as a naughty child and not as a victim but merely as a perpetrator of a crime..

Protection for children in conflict with the law is essential, given that children in conflict with the law find themselves in situations and conditions beyond their mental and psychological capabilities. During the investigation phase, investigators often prioritize the interests of the legal process, neglecting the child's interests and welfare. Therefore, they must receive legal protection, given their high vulnerability to various threats of mental, physical, and social harm.

Although the quantity and quality of juvenile delinquency has continued to increase over the years, efforts to address the problem through criminal law have not yielded satisfactory results, and issues such as reoffending by children further complicate matters. As stated in Article 1, paragraph 5 of the UUSPPA, imprisonment is a last resort under the Juvenile Criminal Justice System Law. The International Convention on the Rights of the Child ("CRC"), which recognizes children as human beings entitled to protection, serves as the basis for the Juvenile Criminal Justice System Law.

Based on the foregoing, it is necessary to reconstruct criminal law policies regarding children. There are 3 meanings regarding criminal policy, namely: 1) In the narrow sense, it is the whole principle and method that is the basis of the reaction to violations of the law in the form of criminal acts; 2) In the broad sense, it is the whole function of the law enforcement apparatus, including the working methods of the courts and the police; and 3) In the broadest sense (which he took from Jorgen Japsen), it is the whole policy, carried out through legislation and official bodies, which aims to uphold the central norms of society.

Barda Nawawi Arief explained that crime prevention policies or efforts are essentially an integral part of efforts to protect society (social defense) and efforts to achieve social welfare (social welfare). The means used are not only penal (criminal law) but also non-penal means. The latter is considered the most strategic because it is more preventative in nature.

There is a common perception that children involved in legal disputes are victims of crime, but in reality, they are often placed in the role of suspects or defendants. The purpose of providing legal protection to children, also known as advocacy, is to protect children from all forms of discrimination, whether physical, psychological, or social, so that they can grow and develop normally. The UUSPPA was established as an effort to impose proportional legal sanctions on children, not only imposing punishment-oriented sanctions (imprisonment) but

also providing alternative forms of guidance, namely non-penal sanctions (actions) by implementing the concept of Restorative Justice.

The individual offender development paradigm (also known as the Individual Treatment paradigm) continues to dominate the legal framework for dealing with children, claims Paulus Hadisuprpto. One paradigm is said to take a "therapeutic" approach to dealing with delinquent children; according to this view, offenders are sick individuals who require treatment by identifying the source of their illness, which in this case is the child's deviant behavior. Therapy for delinquent children is based on diagnostic findings and aims to address the child's illness through individualized punishment and personal growth. In dealing with ABH, Muladi argues that the Restorative Justice and Diversion approaches work well. (1) Punishment, in the form of retributive justice, causes additional hardship for the perpetrator's family. (2) Punishing the perpetrator does little to alleviate or heal the victim's suffering. (3) The formal criminal justice system is long, expensive, and fraught with uncertainty. (4) Correctional services, as an extension of punishment, offer little improvement in terms of the future of the inmate or their relationship with the victim. (5) Involve all parties involved—the perpetrator, the victim, the family, and others—in finding solutions. (6) Hold the perpetrator accountable for reparations for the harm they have caused, and recognize the concept of cost justice, which encompasses legal, moral, and social justice.

Law No. 11 of 2012 concerning the Juvenile Criminal Justice System adopts the concept of restorative justice, which is realized through diversion efforts. Restorative justice is a model for resolving criminal cases that prioritizes the restoration of victims, perpetrators, and the community. The goal of restorative justice is the participation of victims and perpetrators, and the participation of citizens as facilitators in resolving cases, thereby ensuring that children or perpetrators no longer disrupt the harmony that has been created in society. Restorative justice can be realized through: mediation between the victim and perpetrator, deliberations between the victim's and perpetrator's families, and community services that are restorative for both victims and perpetrators. Restorative justice is an alternative dispute resolution outside the courts, also known as Alternative Dispute Resolution (ADR). ADR is generally used in civil cases, not criminal cases.

Literature Review

Criminal Law Policy

Criminal law policy is a rational effort by the state to combat crime. This policy encompasses two main approaches: penal (sanctions/punishment) and non-penal (prevention before crime occurs), in order to achieve community protection and restorative justice. Criminal law policy is essentially an activity that involves determining goals and ways to achieve those goals. This process is closely related to decision-making or choosing among various alternatives regarding what the criminal law system wants to achieve in the future. Therefore, criminal law policy is closely related to the entire process of criminal law enforcement, which includes the application and implementation of material criminal law (substance), formal criminal law (criminal procedure), and criminal law implementation.

Children as Perpetrators of Criminal Acts

Basically, a child crime is a criminal act committed by a child, as regulated in Article 1 paragraph (3) of Law Number 11 of 2012 concerning the Child Criminal Justice System, namely: "A child in conflict with the law, hereinafter referred to as a child, is a child who is 12 (twelve) years old, but not yet 18 (eighteen) years old who is suspected of committing a crime. The concrete minimum age limit is 12 (twelve) years to 18 (eighteen) years as the maximum limit. Psychologically, children are considered capable of being responsible at that age, so this is the background in forming laws by determining the minimum and maximum age limits. The opinions of experts who explain criminal acts. One of them is Moeljatno's opinion which states that criminal acts can be interpreted as a juridical understanding to provide a definition of legal

terms so that it is not easy to provide a definition of criminal acts. The purpose of discussing criminal law is to provide an understanding that criminal acts are sanctions for a criminal act or offense. In contrast to criminal law, criminalization explains more about the theory and basic objectives of criminal law. Criminal is a legal term which in Dutch is called straf, meaning punishment.

Restorative Justice

The principle of restorative justice involves the joint participation of perpetrators, victims, and community groups in resolving incidents and crimes, working together as stakeholders to promptly find solutions in a manner that is fair to all parties. Restorative justice has a simple function and resolution. This means that the measure of justice is no longer based on appropriate retaliation (physical, psychological, or punitive) by the victim against the perpetrator, but rather on the healing of painful actions through giving support to victims and, if necessary, involving families and communities to hold perpetrators accountable.

Restorative justice is a resolution process carried out outside the criminal justice system that involves victims, perpetrators, their families, the community, and other parties with interests in a criminal act to reach agreement and resolution. Restorative justice is a just resolution that involves perpetrators, victims, their families, and other parties involved in non-criminal acts, who together seek to resolve the criminal act and its implications, emphasizing restoration rather than retribution.

Restorative Justice is a popular alternative in many parts of the world for dealing with crimes of fraud and embezzlement or for individuals in trouble with the law because it offers a comprehensive and effective solution. Restorative Justice aims to empower victims, perpetrators, families, and communities to correct unlawful acts by using awareness and conviction as a basis for improving people's lives and explaining that the concept of Restorative Justice is simple. The restorative justice approach has been the dominant model of the juvenile criminal justice system for most of human history.

Research Methodology

The type of research used is normative juridical because this research refers to applicable legal regulations contained in legislation. Normative juridical research places norms as the object of research, both norms in the form of legal dogma, and legal norms derived from a law.

The method of determining subjects is often referred to as the method of determining data sources. The meaning of data sources in research is the subjects from whom the data is obtained. This research uses secondary data, divided into primary legal materials, secondary legal materials, and tertiary legal materials. Secondary data is data obtained from literature studies relevant to this research. Secondary data is data sourced from literature studies (library research) related to publications, namely library data listed in official documents.

Result

Criminal Law Policy on Children as Perpetrators of Criminal Acts

Definition of a child in Article 45 of the Criminal Code "In the case of criminal prosecution of a minor for committing an act before the age of 16, the judge may determine to order that the guilty person be returned to his parents, guardian or caretaker without any punishment or order that the guilty person be handed over to the government without any punishment, if the act is a crime or one of the violations based on Articles 489, 490, 492, 497, 503-505, 514, 517-519, 526, 531, 532, 536, and 540 and two years have not passed since being declared guilty of committing a crime or one of the violations mentioned above and the decision has become final or has imposed a punishment on the guilty person.

The fundamental principles regarding children who commit crimes are outlined in Law Number 3 of 1997 concerning Juvenile Courts, including:

1. A child between the ages of 8 and under 18 who commits a crime may be brought before a juvenile court, provided the child is under 21 years of age.
2. Juvenile court hearings are held in private and may only be attended by the child, their parents or guardians or foster parents, legal counsel, community counselors, or other parties authorized by the judge. However, the verdict is pronounced openly to the public.
3. Punishment for juvenile offenders can take several forms, including detention, detention, monitoring, and monetary compensation.
4. For children, the maximum prison sentence is half that of an adult. Children can be sentenced to 10 years if the offender is serving a life sentence or the death penalty.
5. If the juvenile offender is under 12 years old and faces the death penalty or life imprisonment, the following options are considered: (1) returning the juvenile offender to his or her parents, guardian, or foster parent; (2) transferring the juvenile offender to a state-run educational or vocational program; or (3) placing the juvenile offender in a state-run social institution or a non-profit group specializing in this field..

The juvenile justice system is an abbreviation of "Juvenile Justice System," a general term for various court-affiliated agencies such as prosecutors, lawyers, supervisory bodies, juvenile detention centers, and child development centers. The first official agency the court system contacts when a minor is in conflict with the law is the police. They decide whether the minor is released or continues to be processed. In the second step, the juvenile is given a choice, such as being released or being placed in a correctional facility, by the prosecutor and the parole board. In the third step, the juvenile is processed by the juvenile court. Correctional facilities are the last step. To understand the juvenile justice system, we must first describe the criminal justice system, as it is part of the larger criminal justice system. According to Remington and Ohlin, a systems approach to the criminal justice administration process can be viewed as the Criminal Justice System. The criminal justice system is the result of the interaction between societal norms and values, administrative procedures, and laws and regulations. The concept of a system itself implies an interactive process, with all its limitations, that is logically and efficiently designed to produce a specific outcome. The criminal justice system is defined by Mardjono Reksodiputro as a crime control system that includes the police, prosecutors, courts, and correctional institutions. According to Barda Nawawi Arief, there are four branches of authority in the criminal justice system: investigation, prosecution, trial, and execution. These branches are functionally equivalent to the criminal law enforcement system or the judicial power system in the criminal law realm. Quoting Sudarto, "all activities carried out by the police, prosecutors, judges, and other officials must be based on the principle of the welfare and interests of children." This means that in juvenile criminal justice, there is an examination and decision-making process designed to benefit children. Based on the above description, we can conclude that the four branches of authority related to the handling of juvenile criminal cases—investigation, prosecution, trial, and execution—are an inseparable unit in the framework of enforcing juvenile criminal law.

Legal reform efforts in Indonesia, which began with the enactment of the 1945 Constitution, are inseparable from the foundation and objectives to be achieved, as formulated in the preamble to the 1945 Constitution. The objectives outlined in the 1945 Constitution are, briefly, "to protect the entire Indonesian nation and to advance the general welfare based on Pancasila." This is the general policy outline that serves as the foundation and objective of legal policy in Indonesia. It also serves as the foundation and objective of every legal reform effort, including reforms in the field of criminal law and crime prevention policies. Handling children in conflict with the law is part of the policy or effort to combat crime because its primary goal is child protection and welfare, as children are part of society.

It is further explained that the three stages of criminal law enforcement policy contain three powers/authorities: legislative/formulative power to determine or formulate what acts are

punishable and what sanctions can be imposed; judicial/applicative power to implement criminal law; and executive/administrative power in enforcing criminal law.

Legislative policies/formulations have shown a significant increase in the likelihood of imprisonment. The primary motivating factor for law enforcement officials, particularly judges, to impose imprisonment is the existence of a single sentence containing only the threat of imprisonment. A cumulative sentence is essentially no different from a single sentence, as it requires the imposition of imprisonment along with other types of criminal sanctions. The policy for determining criminal sanctions is essentially also the policy for implementing or operationalizing criminal sanctions.

A criminal policy must integrate and harmonize all non-penal preventive activities into a unified and integrated system of state activities. In this regard, Radzinovicz stated: "Criminal policy must combine and organize these various preventive activities in such a way as to form a single, comprehensive mechanism and ultimately coordinate them all into a unified system of state activities."

Legislative policy is essentially an operational policy, meaning that if the use or operation of imprisonment is to be selective or limited and flexible, the policy outlined in the legislation must be consistent. This single formulation system clearly contradicts the basic principles of the juvenile criminal justice system, which emphasizes restorative justice. Furthermore, it is inconsistent with the basic principles developed in Indonesia within the correctional system. The persistence of this single formulation system actually contains a contradiction in the concept of correctional concepts that are based on the idea of rehabilitation and resocialization that requires individualization and flexibility in determining appropriate punishment for the accused. This flexibility is not only in terms of determining the size of the sentence (*strafmaat*) and the implementation of its guidance (*Strafmodus*), but also in determining the type of punishment (*strafsoort*). Viewed from the perspective of the process of operationalizing prison sentences selectively and flexibly, the formulation of the threat of prison sentences that are imperative and absolute (imperative and absolute) as is the case with the single and cumulative formulations, can only be justified if accompanied by the formulation of policies that can soften the implementation of these imperative and absolute policies. The formulation of policies that soften the formulation of rigid policies can be formulated as preventive or repressive policies. Preventive policies are policies granted by law to law enforcement officials to prevent or not bring suspects to court. So, to prevent the possibility of the defendant being sentenced to prison in connection with the existence of a system for formulating the threat of prison sentences which is imperative.

Restorative Justice for Children as Criminal Offenders

Protection for children in conflict with the law is essential, given that children in conflict with the law find themselves in situations and conditions beyond their mental and psychological capabilities. During the investigation phase, investigators focus solely on the interests of the legal process, ignoring the child's interests and welfare. Therefore, they must receive legal protection, given their high sensitivity to various threats of mental, physical, and social harm. The justice currently practiced in the Indonesian criminal justice system is retributive justice, while what is desired is restorative justice, a process where all parties involved in a particular crime work together to solve the problem and address its future consequences. Law No. 11 of 2012 concerning the Juvenile Criminal Justice System embraces the concept of restorative justice, which is realized through diversion efforts. Justice.

Restorative justice is a model for resolving criminal cases that prioritizes the restoration of victims, perpetrators, and the community. The goal of restorative justice is the participation of victims and perpetrators, and the participation of citizens as facilitators in case resolution, thereby ensuring that children or perpetrators no longer disrupt the harmony that has been created in society. Restorative justice can be achieved through: mediation between the victim and the perpetrator, family consultations between the victim and the perpetrator, and

community services that provide recovery for both the victim and the perpetrator. Restorative justice is an alternative dispute resolution method outside the courts, also known as Alternative Dispute Resolution (ADR). ADR is generally used in civil cases, not criminal cases.

The concept of an integral crime prevention policy implies that all rational efforts to combat crime must be integrated. This means that policies to combat crime using criminal sanctions must also be combined with other non-penal efforts. Combating crime by imposing criminal sanctions alone is only temporary, as the crime may recur, whether committed by the same person or a different person. Therefore, the root cause of the crime must be sought. By understanding the criminal situation and its causes, we can try and strive to eliminate it, or at least reduce it. Therefore, reducing crime (especially crimes caused by social conditions) should not only use penal means but also employ non-penal approaches in the form of social policies and involve the community in crime prevention and control efforts.

Non-penal efforts can encompass a very broad range of areas across all sectors of social policy or national development. The primary goal of these non-penal efforts is to improve certain social conditions that indirectly have a preventative effect on crime. Thus, from a criminal policy perspective, all non-penal preventive activities actually have a very strategic position. Non-penal efforts hold a key position that must be intensified and made effective. Failure to cultivate this strategic position will have fatal consequences for crime prevention efforts. Therefore, a criminal policy must be able to integrate and harmonize all non-penal preventive activities into a systematic and integrated system of state activities.

Non-penal means emphasize prevention before a crime occurs. These efforts are undertaken to prevent people from committing unlawful acts. This is highly dependent on a country's policy of promoting the welfare of its citizens.

Preventive crime prevention is undertaken to prevent the occurrence or occurrence of crimes in the first place. Preventive efforts are prioritized because they can be carried out by anyone without special expertise and are economically feasible. Given that non-penal crime prevention efforts focus more on preventing crime before it occurs, the primary goal is to address the factors conducive to crime.

These factors focus on social problems or conditions that directly or indirectly give rise to or foster crime. According to Muladi, preventive efforts can be implemented without using the criminal justice system, for example, through community mental health efforts, legal counseling, reform of civil law, administrative law, and so on.

The non-penal approach encompasses a broad area of crime prevention, encompassing both policy and practice. These policies vary from country to country, depending on the cultural, political, and intellectual backgrounds of each society.

Within these preventive efforts, the most important thing is to implement positive initiatives and to create conditions, such as economic conditions, the environment, and community culture, that serve as a dynamic force for development, rather than creating social tensions that encourage deviant behavior. Furthermore, preventive efforts require increasing public awareness and participation that security and order are a shared responsibility. Crime is a social process (criminalities as a social process), so law enforcement must also be viewed within the framework of preventive criminal policy (crime prevention) through repressive means, including enforcing criminal law and imposing penalties on perpetrators. Such methods are not the only path. For various types of crime (total crime), a successful approach through criminal policy is also needed to achieve social welfare. Criminal policy, social policy and law enforcement policy must be in line with each officer/agency moving towards an integral system to jointly combat crime.

Crime prevention is essentially the primary goal of criminal policy. However, it must be acknowledged that the concept and definition are still too weak, so people tend to discuss crime prevention in terms of models. The broad outline of crime prevention/control policy strategies according to the UN Congresses is as follows:

1. The basic/main strategy for dealing with crime is to eliminate the causal factors/conditions that give rise to crime..
2. Crime prevention and criminal justice must be pursued through integral/systemic policies. Integral/systemic policies contain various aspects, including::
 - a. There is integration between crime prevention policies and the overall development policy of the political, social, and cultural system.
 - b. There is integration between the treatment of offenders (with criminal sanctions/actions) and the treatment of society.
 - c. There is integration between symptomatic healing/treatment and causal healing/treatment.
 - d. There is integration between the treatment of offenders and the treatment of victims.
 - e. There is integration between individual/personal responsibility and structural functional responsibility.
 - f. There is integration between penal and non-penal means.
 - g. There is integration between formal and informal/traditional means, and between the legal system and the extra-legal system.
 - h. There is integration between the policy approach and the value approach..
3. The quality of law enforcement officers needs to be improved and increased.
4. It is necessary to improve and enhance the quality of institutions and organizational management systems/data management..
5. Preparation of several guidelines, basic principles, rules, standard minimum rules (SMR).
6. Increase international cooperation and technical assistance in order to strengthen the rule of law and management of the criminal justice system..

Crime prevention essentially refers to any action specifically aimed at limiting the spread of violence and crime, whether by reducing opportunities for crime or by influencing potential perpetrators and the general public. Generally, preventive strategies fall into three categories, based on the public health model: primary prevention. Primary prevention is a strategy implemented through social, economic, and other social policies aimed at reducing criminogenic situations and the roots of crime, such as policies in education, housing, employment, recreation, and so on. The primary target of this policy model is the wider community. Secondary prevention. Secondary prevention can be found within the criminal justice system and is applied practically, as is commonly seen in the role of the police in crime prevention. It targets those deemed likely to offend. Tertiary prevention. Tertiary prevention is primarily directed at recidivists (by the police or other institutions in the criminal justice system) and primarily targets those who have already committed crimes. Law, which embodies the values of truth, honesty, justice, trust, and compassion for others, can only be realized by people who possess high quality and integrity in internalizing these values. It is impossible to expect the values of truth to be realized if the essential values of truth are not internalized, namely truth in thought, truth in speech, and truth in action. Public distrust will arise and the authority of the law will decline if the public sees the reality that law enforcers and those involved in legal matters actually commit untruths and other reprehensible acts. In fact, it is precisely this value of trust that is intended to be upheld and protected by law, because law is the foundation of public hope and trust in regulating social interaction. Law is a manifestation of the value of trust. Upholding the authority of the law essentially means upholding the value of trust within society. Chaos or unrest will arise if this value of trust is lost in society.

"Diversion" means "transfer" in English. As explained by Romli Atmasasmita, diversion occurs when a judge decides not to continue examining a case or a child while the examination is ongoing in court. Law Number 11 of 2012 concerning the Juvenile Criminal Justice System defines diversion as "the transfer of the settlement of a child's case from the criminal justice system to a process outside the criminal justice system," as stated in Article 1

Paragraph 7. To ensure that juvenile offenders do not face social stigma due to their involvement with the legal system, the Law on the Juvenile Criminal Justice System establishes a controlled diversion program. Law enforcement agencies, including the police, prosecutors, judges, and other institutions, are authorized to divert cases involving minors from the traditional justice system. The diversion program aims to reduce the negative impact of juvenile delinquency on society. Article 6 of Law Number 11 of 2012 concerning the Juvenile Criminal Justice System states that the purpose of diversion is: Achieving peace between perpetrators and victims, resolving children's cases outside the judicial process, preventing children from being deprived of their liberty, encouraging community participation, and instilling a sense of responsibility in children.

The implementation of the diversion goal of restorative justice is as an effort for recovery, not as a form of retribution as is commonly known in criminal law..

Conclusion

Criminal law policy for children as perpetrators of crimes in Indonesia is specifically regulated through Law Number 11 of 2012 concerning the Juvenile Criminal Justice System (SPPA). This regulation aims to provide special protection, guarantee children's futures, and prioritize a restorative justice approach over retaliation.

Restorative justice for children in conflict with the law is a criminal case resolution that emphasizes restoration rather than retaliation. This approach must be prioritized in the justice system to restore social balance and avoid negative impacts or stigma on children's futures. Reconstructing juvenile criminal law policy in Indonesia is crucial to shift the paradigm from retributive to restorative. This approach focuses on case resolution involving victims, perpetrators, families, and the community to achieve dialogue, accountability, and peace.

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