

The Influence Of Differences In Judges' Opinions On Legal Certainty In Deciding A Case

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Abstract

This study examines the influence of differences of opinion among judges on legal certainty in court decisions. In judicial practice, differences of opinion between judges often arise and have the potential to affect consistency and legal certainty, which are one of the main pillars of the legal system. The research method used is qualitative with a juridical-normative approach, utilizing analysis of relevant laws and legal literature. The results of the study indicate that differences of opinion among judges can cause legal uncertainty if not managed properly, thus impacting the credibility of the judicial institution and public trust in the judge's decision. Therefore, it is important to develop clear mechanisms and standards for handling differences of opinion among judges to maintain legal certainty in the judicial system.

Keywords: Differences Judges Opinion; Legal Certainty; Judicial System.

Abstrak

Penelitian ini mengkaji tentang pengaruh perbedaan pendapat hakim terhadap kepastian hukum dalam putusan pengadilan. Dalam praktik peradilan, perbedaan pendapat antar hakim kerap kali muncul dan berpotensi mempengaruhi konsistensi dan kepastian hukum yang merupakan salah satu pilar utama sistem hukum. Metode penelitian yang digunakan adalah kualitatif dengan pendekatan yuridis-normatif, memanfaatkan analisis peraturan perundang-undangan dan literatur hukum yang relevan. Hasil penelitian menunjukkan bahwa perbedaan pendapat antar hakim dapat menimbulkan ketidakpastian hukum apabila tidak dikelola dengan baik, sehingga berdampak pada kredibilitas lembaga peradilan dan kepercayaan masyarakat terhadap putusan hakim. Oleh karena itu, penting untuk menyusun mekanisme dan standar yang jelas dalam penanganan perbedaan pendapat antar hakim guna menjaga kepastian hukum dalam sistem peradilan.

Kata Kunci: Perbedaan Pendapat Hakim; Kepastian Hukum; Sistem Peradilan.

Introduction

Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia states that "The State of Indonesia is a state of law." This statement shows that all sectors of

national and state life, including the government system, must be based on applicable legal rules. Simorangkir explains that the concept of a state of law refers to a state system in which all state actions and policies must be based on the principle of legality, meaning that everything is carried out through, in accordance with, and does not deviate from the law. The legal position is in the highest position to ensure that state power does not run arbitrarily but remains within the established legal corridor.¹

In line with the principle of the rule of law, Gustaf Radbruch through the concept of "Standard Priority Teaching" states that there are three main values that are the objectives of the law, namely justice, utility, and legal certainty. Of the three, justice occupies the most fundamental position, although it does not mean that other elements can be ignored. The ideal law is a law that can to harmonize these three elements to guarantee welfare and order in society. In Radbruch's view, justice is interpreted narrowly as equality of rights before the law. Utility or finality indicates that the content of the law must reflect the practical objectives to be achieved, while legal certainty refers to the existence of clear and consistently enforceable rules.²

Deepening the meaning of legal certainty, from the three basic principles of law put forward by Radbruch, legal certainty demands that the law can function as a rule that must be obeyed. This does not only include the implementation of the rule but also how the norms or contents of the material in the regulation must contain fundamental legal principles. Legislation as a form of written norms in the Indonesian legal state system plays a role as a foundation in the implementation of government as well as a guideline for all its implementation.³

In addition to legal certainty, the aspect of justice is also an important element that needs to be further analyzed in realizing an ideal legal system. Justice is a major aspect of the legal system and is one of its main objectives. In society, justice is often considered inseparable from the law itself. However, there are still many views that

¹Manan, Bagir and Magnar, Kuntanan. *Several Problems of Constitutional Law* (Bandung: PT. Alumni, 2017), 54.

²*Ibid.*, 28.

³Dimiyati, Khudzaifah. *Legal Theorization: A Study of the Development of Legal Thought in Indonesia 1945-1990* (Surakarta: Muhammadiyah University Press, 2015), 14.

state that the current legal system has not been able to fully realize justice. The concept of justice cannot be equated with the principle of absolute equality. Over time, the understanding of justice continues to change, following the dynamics of the times and the development of human thought patterns. This defines absolute justice as something complex, considering that each individual has a subjective interpretation of what is called justice.

According to Satjipto Rahardjo, the concept of justice reflects how a person views the essence of human beings and how he or she treats others. On the other hand, Angkasa states that justice functions as a benchmark for a person in assessing objects outside of himself or herself. Given that the object being assessed is another individual, the assessment cannot be separated from the way a person conceptualizes or interprets the human being himself or herself. If a person views another person as a respectable entity, then the attitude and treatment towards him or her will follow that view, which will ultimately form a measure or standard in interacting with others. Thus, it can be concluded that the issue of justice is closely related to the philosophical view of humans.

The main objectives of the law include three important aspects, namely legal certainty, justice, and benefit. The decisions issued by judges in court are part of the law, so they should reflect these three elements. However, in practice, combining the three is often challenging, especially because there is often tension or conflict between legal certainty and justice. A judge does not always adhere to only one legal principle when trying a case. Difficulties arise for judges who prioritize legal certainty, especially when written regulations do not provide adequate answers to the problems faced.⁴ On the other hand, if attention is more focused on the principle of justice, then the judge must also consider the laws that apply in society, which include customs and unwritten legal norms. In providing legal reasons and considerations, the judge is expected to be able to adjust to the provisions that live in society.

⁴Fartini, Ade. "Law and State Functions According to the 1945 Constitution of the Republic of Indonesia," *Al-Ahkam* 14, no. 1 (2018): 1.

Law enforcement begins with paying attention to the role played by law enforcers. To understand effective law enforcement, it is very important to understand the principles contained therein. This also applies to judges in realizing law enforcement that reflects the values of justice, legal certainty, and benefit through the judicial process. Judicial power is an independent power and has the main task of organizing trials to uphold law and justice. This provision is emphasized in the Law on Judicial Power, which states that judicial power is a form of state power that is free from interference from other parties in carrying out judicial functions, based on Pancasila, and aims to realize the Republic of Indonesia's Legal State. However, in practice, there is still public distrust of the judicial institution. One of the factors that triggers this is the existence of judges' decisions that are considered not to fully reflect the principles of legal certainty, justice, and benefit that are the hopes of the community in seeking justice.

Judges have the goal of upholding truth and justice, and in carrying out their duties, are required to always uphold the law. The life of a judge must reflect honour and have impeccable personal behaviour. In carrying out their role in the judicial process, judges bear great responsibility to the community to produce decisions that reflect legal certainty, justice, and benefits, so that the courts can be a place that protects the hopes of the community in seeking justice. As officials in the judicial power who carry out the judicial process, judges certainly hold great responsibility for the decisions taken.⁵The decisions made by judges in court should not cause new problems in society and must maintain the authority and credibility of the court institution. However, there are still many decisions by judges in the judicial process that trigger new polemics and do not solve existing problems. Ideally, the decisions made by judges should be able to solve the problems faced.

When the decision rendered by the judge does not reflect these principles, it can hurt the image and credibility of the court itself. Realizing a decision based on these three aspects is not an easy task, especially when the demands for achieving balanced

⁵Indrayati, Rosita. "Revitalization of the Role of Judges as Executors of Judicial Power in the Indonesian Constitutional System," *Kertha Patrika* 38, no. 2 (2016).

justice become increasingly complex.⁶This is due to the fact that the concept of justice in the context of a judge's decision often does not have an objective benchmark that can be accepted by all parties. What is considered a form of justice by one party will not necessarily be perceived as fair by the other party, because the perception of justice is very dependent on the perspective and interests of each individual.

In the course of enforcing the law, justice is often questioned, especially when it must be translated into concrete decisions. One of the key factors in this process is the judge's belief, which plays a major role in deciding how justice is applied. Justice itself, as previously explained, is not absolute and can vary according to the views of each individual. Therefore, each judge brings a personal perspective and belief that influences the way they resolve the legal cases before them.

Belief can be understood as an attitude shown by someone when they feel they have sufficient knowledge and conclude that they have achieved a form of truth. Because belief is a subjective attitude, it does not necessarily guarantee that the belief held is always true. Therefore, belief alone cannot be considered as the only path to true truth. Belief is not formed just like that but is based on a certain foundation. In the realm of justice, especially regarding the judge's belief, Subekti emphasized that the belief must be based on something that is legally recognized as evidence according to the provisions of the law.⁷This is the result of the interpretation of laws and regulations, which can differ from one judge to another. This is increasingly relevant in the legal system in Indonesia, where judges are not merely conveyors of legal norms, but have independence in examining and deciding cases. Therefore, the judge's conviction has a very crucial position in determining the direction of the decision, especially in criminal cases.

The judge's belief is an inseparable element of the judge's role in examining, trying, and resolving legal cases. As the subject responsible for the decision-making process, this belief is an important part of determining the outcome of a case. In practice, the

⁶Aryanto, Jesi. "Supervision of Supreme Court Justices and Constitutional Justices by the Judicial Commission," ADIL: Jurnal Hukum 3, no. 2 (2019): 283.

⁷Subekti. Law of Evidence (Jakarta: Balai Pustaka, 2015), 2.

judge's belief is not always accepted as part of an approach that can produce objective and absolute truth. This is because this belief is often influenced by various subjective factors that are not always in line with the broader search for truth. Therefore, the position and existence of the judge's belief will be greatly influenced by the method of evidence applied within the framework of criminal procedure law. In this context, the judge's decision depends not only on personal belief but also on the process of evidence that must follow clear and objective legal procedures.

Research Method

This study uses a qualitative method with a juridical-normative approach. The data used are in the form of primary legal materials, namely laws and regulations in force in Indonesia, as well as secondary legal materials in the form of literature, books, articles, and journals that discuss differences of opinion among judges, legal certainty, and justice. Data collection is carried out through library research by reviewing and analyzing legal documents and relevant previous research results. Data analysis is carried out descriptively and qualitatively to describe and explain how differences of opinion among judges affect the application of legal certainty in court decisions.

Results and Discussion

The Position of Judicial Dissent in the Judicial System in Indonesia

As is well known, the legal system in Indonesia is relatively new in recognizing and implementing the practice of judicial dissent. Previously, the concept was unknown and had not received normative regulation in the national legal framework. Law Number 14 of 1970 concerning the Main Provisions of Judicial Power, as amended by Law Number 35 of 1999, does not contain provisions regarding judicial dissent. Explicit regulations were only found in Law Number 4 of 2004 concerning Judicial Power, specifically in Article 19. However, these provisions have now changed with the enactment of Law Number 48 of 2009 concerning Judicial Power which replaced the previous law.

Therefore, in modern judicial practice, the existence of dissenting opinions of judges plays an important role in maintaining the integrity and freedom of judges in deciding cases.⁸ Although Indonesia adheres to a civil law legal system, the practice of including dissenting opinions has been accommodated in the judicial system, especially since the enactment of Law Number 48 of 2009 concerning Judicial Power. This shows that even though it does not originate from the national legal tradition, dissenting opinions of judges still have their own relevance and urgency in the context of legal reform and as a form of freedom of opinion in the judicial environment.

Along with that, in Law Number 14 of 1985 concerning the Supreme Court, the concept of differences of opinion of judges has not been specifically regulated. Only in the replacement Law, namely Law Number 5 of 2004 concerning the Supreme Court, the provisions regarding this matter are contained in Article 30, which was then changed with the enactment of Law Number 3 of 2009 concerning the Supreme Court.

The development of this regulation shows significant progress in the Indonesian legal system regarding the recognition and regulation of differences of opinion of judges. To understand the broader context, it is also necessary to review how the Indonesian legal system views judicial power, especially in terms of the freedom and independence of judges. In Law Number 14 of 1970, it is emphasized that "Judicial Power is the power of an independent state to administer justice to uphold law and justice based on Pancasila, for the sake of the implementation of the Constitution of the Republic of Indonesia" (Article 1). This provision implies that an independent judicial power must be free from intervention by other parties in the state, as well as free from coercion, instructions, or recommendations originating from outside the judicial institution, except within the limits permitted by law. Freedom in exercising judicial authority is not absolute, considering that the task of a judge is to uphold law and justice based on Pancasila through interpretation and the search for legal principles that form

⁸ Louis Fernando Simanjuntak, Elis Rusmiati, & Budi Arta Atmaja, Dissenting Opinion by Judges in The Process of Making Decisions on Corruption Cases as a Form of Judge Freedom, *Jurnal Mercatoria*, 16 (1) Juni 2023 ISSN 1979-8652 (Print) ISSN 2541-5913 (Online) DOI: <https://doi.org/10.31289/mercatoria.v16i1.8915>

the basis of his decisions so that the resulting decisions reflect a sense of justice for the Indonesian nation and people.⁹

Along with these developments, the regulation regarding differences of opinion of judges was then explicitly stated in several provisions of the laws that are currently in force. In the normative realm, this regulation is stated in Article 14 of Law Number 48 of 2009 concerning Judicial Power, which states that:

- (1) The decision was taken through a closed judicial deliberation hearing mechanism;
- (2) Every judge involved in the deliberation is required to submit written considerations or opinions on the case being handled, which then becomes an inseparable part of the decision; and
- (3) If a consensus decision is not reached during the deliberation process, the differing opinion of the judge concerned must be included in the verdict.

Furthermore, the regulation regarding differences of opinion of judges at the cassation level at the Supreme Court is also contained in Article 30 paragraphs (2) and (3) of Law Number 5 of 2004 concerning Amendments to Law Number 14 of 1985 concerning the Supreme Court. This provision states that in the deliberation process, each Supreme Court judge is required to provide written considerations or opinions on the case being examined and become an integral part of the decision. If no consensus is reached, then the dissenting opinion of the Supreme Court judge must be included in the final decision.

The provision not only confirms the obligation of each judge to submit written considerations but also recognizes the importance of the existence of different opinions in the deliberation process. This regulation reflects the awareness that in dealing with various complex and dynamic cases, each judge has the freedom and responsibility to interpret the law according to his understanding and beliefs. This provision also places judges not only as implementers of joint decisions but also as individuals who have an

⁹ Urbanus Ura Weruin . (2024). Dissenting Opinion Para Hakim dalam Pengadilan: Fungsi dan Ancamannya. *JIIIP - Jurnal Ilmiah Ilmu Pendidikan*, 7 (10), 12359-12367. <https://doi.org/10.54371/jiip.v7i10>.

important role in maintaining the quality and integrity of court decisions through freedom of opinion.

Judges have an important role in the process of administering justice, so they are fully responsible for implementing the principles of justice in every trial process.¹⁰ Decisions taken within the space of judicial independence will protect them from the influence of public opinion that has the potential to corner or suppress the independence of decisions. In carrying out their duties, it is inevitable for a judge to be faced with debates or differences of viewpoint. These differences of opinion generally stem from differences in the level of understanding between judges in interpreting the intent and meaning contained in legal norms, which must be adapted to the concrete conditions of dynamic cases.

Based on various cases related to differences of opinion of judges, the existence of such dissenting opinions is basically a form of rejection by members of the panel of judges who are in a minority position against the decision that has been taken and agreed upon by the majority of members of the panel of judges in a case. In the decision-making process, the panel of judges can experience differences of opinion which are divided into several categories, namely:¹¹

- 1) Differences concerning the overall basis of consideration up to the main or core of the decision.
- 2) Differences in the basis of consideration, but do not impact the main or core of the decision.
- 3) Similarities in some aspects of consideration, but there are differences in the main points or content of the decision itself.

Normative provisions that recognize differences of opinion among judges not only reflect formal legal aspects but are also in line with the legal culture that is developing in the current Indonesian judicial system. Judges are given freedom in carrying out their judicial functions, including the freedom to differ from other judges in decision-

¹⁰Anam, Ach. Dlofirul. "The Axiological Basis of Judicial Freedom in Deciding on Substantive Justice Review Cases," *An-Nawazil Journal* 1, no. 2 (2019): 39.

¹¹NG, Marshal. "Dissenting Opinion in Indonesian Law." *Varia Hukum*, Edition No. 39 Vol. 30 (2018).

making.¹² This freedom is based on the principle of the independence of the judicial power guaranteed by the state constitution.

However, the freedom of judges is not something absolute, but is relative and limited by the main objective of upholding law and justice based on Pancasila. To ensure that this function is carried out effectively, judges are given autonomy in the form of relative freedom.

With the existence of normative provisions that recognize and regulate differences of opinion among judges, the position of these differences of opinion in the Indonesian judicial system is not merely a formal mechanism, but also an important part of maintaining the independence, integrity, and quality of court decisions. This confirms that differences of opinion among judges have received strong legal recognition and play a significant role in realizing a democratic and transparent decision-making process, in line with the principles of the rule of law applicable in Indonesia.

The Influence of Differences of Opinion Between Judges on Legal Certainty In a Decision on a Case

In the criminal justice process, judges generally acknowledge that the primary objective is to formally find the truth. Therefore, judges can only consider official statements and evidence presented during the trial to find the truth. The principle of criminal procedure law emphasizes that judges are passive, meaning that judges do not set limits or scopes for the cases submitted, but rather are determined by the parties involved in the case. In addition, judges are not permitted to decide cases outside the demands submitted or to make decisions that exceed the demands as regulated in Article 178 paragraph (3) HIR. In carrying out their duties, judges only play a role in receiving, examining, and assessing the evidence submitted by the parties to the case, then making decisions based on the results of the assessment.

¹² Melisa Berliana, Yennie K. Milono, Hj. Lilik Prihatini, (2023). PERBEDAAN PENDAPAT HAKIM (DISSENTING OPINION) TERHADAP PUTUSAN LEPAS DARI SEGALA TUNTUTAN HUKUM TINDAK PIDANA KORUPSI BANTUAN LIKUIDITAS BANK INDONESIA, PALAR (Pakuan Law Review), Vol 09 (1) :26-39

However, in the decision-making process, it is not uncommon for there to be differences of opinion between judges. These differences arise due to variations in the judges' understanding and interpretation of evidence and legal norms that are dynamic according to the complexity of the case. This condition poses a challenge to legal certainty because a decision that is not unanimous can create uncertainty for the parties to the case and the public. However, the existence of a dissenting opinion has an important function as an internal oversight mechanism that maintains the quality and integrity of court decisions. With the space for differences of opinion, judges can express their legal views openly, which ultimately encourages a more democratic and transparent decision-making process. Therefore, although differences of opinion have the potential to create uncertainty, they are also part of the dynamics of a healthy judiciary in maintaining the principles of justice and the independence of judges.

In every case, the judges' differences of opinion have an important meaning related to fundamental values that are often not expressed directly. These differences of opinion contribute to ensuring that court decisions have clarity, legal certainty, accuracy, and legal integrity, and ultimately reflect a judicial system that upholds the principles of democracy.¹³

By understanding the dynamics of differences of opinion in judicial decision-making, it is important to highlight the central role of the judiciary as an institution that ensures effective and just law enforcement.¹⁴ The judiciary in a state of law has a crucial role as an institution that determines the concrete implementation of positive legal norms through judicial decisions in court. In other words, no matter how good and ideal the legal regulations formulated to guarantee security and realize the welfare of the people, these regulations will not have substantial meaning if they are not supported by the judiciary that can provide utility to these norms. In this context, the judicial institution carries out its function as a means of seeking justice for the

¹³McIntyre, Joe. (2016) "In Defense of Judicial Dissent," *Adelaide Law Review* 37: 439-440.

¹⁴ Sunny Ummul Firdaus; Putri Anjelina Nataly Panjaitan; Rizky Kurniyanto Widyasasmito, (2020), *The Role of Dissenting Opinion of Constitutional Judges in National Legal Reform*, *Jurnal Penelitian Hukum De Jure*, 20 (1): 1-10, DOI: <http://dx.doi.org/10.30641/dejure.2020.V20.1-10>

community as well as a forum for resolving disputes related to rights and obligations according to applicable legal provisions.

The principle of dissent in the panel of judges is a manifestation of the freedom and independence of judges guaranteed by judicial power, providing an opportunity for each member to actively raise objections or different arguments against the decision to be taken. This makes the decision-making process not just a result of compromise, but a decision that contains a diversity of views and efforts to find the truth as a whole.

However, views on dissenting opinions of judges in judicial practice, especially in Constitutional Court decisions, are not entirely uniform. Debates regarding the existence of dissenting opinions of judges in Constitutional Court decisions are common.¹⁵ Some academics believe that as long as the decision is made based on the provisions of the law and follows legitimate procedural procedures, the decision still has binding legal force. On the other hand, other views state that the full application of dissenting opinions of judges in the Indonesian legal system does not provide real benefits to the parties to the case, considering that what is implemented concretely is still the opinion of the majority of judges. Other critical opinions emphasize that if a decision is made by a difference of only one vote, then the decision should not be continued by the panel of judges, but rather submitted back to the legislative body as part of an open legal policy.¹⁶

The existence of a dissenting opinion mechanism, namely the inclusion of differences of opinion among members of the panel of judges when making a decision, allows for a minority judge who disagrees with the majority judge and the objection is included in the decision. This provides space for the public to assess the competence and credibility of a judge. A judge who dares to defend his opinion even though it differs from the majority decision that has legal force still shows seriousness and depth

¹⁵Tora Yuliana, Masayu Robianti, Triyuda Kharnady, (2024), Analisis Dampak Adanya Dissenting Opinion Hakim Terhadap Perkara Perdata, *Viva Themis: Jurnal Ilmu Hukum dan Humaniora*, 7n(2): 286 – 300, doi: 10.24967/vt.v6i1.2070

¹⁶Firdaus, Sunny Ummul et al.(2020), “The Role of Dissenting Opinion of Constitutional Judges in National Law Reform,” *De Jure Legal Research Journal* 20 (3): 197-211.

of understanding in handling a case. Usually, the judge has strong reasons in his considerations so that he chooses to defend his opinion.

With this, differences of opinion between judges that arise in a decision do not necessarily weaken legal certainty. In fact, within the framework of a modern justice system that upholds the principles of transparency and accountability, differences of opinion between judges can be an indicator of the health of decision-making dynamics in the judicial environment. Disagreements in the panel reflect a process of in-depth consideration and do not simply follow the majority vote. This allows the public, academics, and legal practitioners to evaluate the quality of decisions more comprehensively. By opening up space for minority judges to express their views, the judicial process becomes more democratic and reflects the complexity of the facts and legal norms relevant to each case.

The application of dissenting opinions of judges in the judicial process is an important form of transparency, without reducing the meaning and main purpose of the law itself. Legal certainty can still be maintained even though the case is handled by a panel of judges consisting of three to five people because the final decision is still based on the majority vote of the judges. The existence of this dissenting opinion makes a significant contribution to increasing the responsibility of judges to the justice-seeking public. In addition, dissenting opinions also serve as a means to encourage critical evaluation and continuous improvement in decision-making, so that the quality of court decisions is maintained and public trust in the justice system is strengthened.¹⁷

Furthermore, differences of opinion among judges also serve as a form of internal control that can improve the quality of future decisions and encourage consistency in legal interpretation through the development of doctrine. In the context of legal certainty, it is true that such disagreements can give rise to various interpretations, but this does not eliminate the legal force of the decision itself. The decision remains legally binding and valid. Therefore, the influence of differences of opinion among

¹⁷Surya, Ni Luh Kadek Rai, and Dewi I Dewa Made Suartha, (2016) "Positive Values of Legal Consequences of Dissenting Opinion in Criminal Justice in Indonesia." *Kertha Wicara: Journal of Legal Science* 5 (3): 1–5.

judges on legal certainty is constructive, because it does not interfere with the finality of the decision, but rather enriches the basis of the legal arguments used and strengthens public trust in the integrity of the justice system. In the long term, this can encourage the formation of more open, progressive, and adaptive judicial practices to the dynamics of society, as well as maintain a balance between justice, certainty, and the benefits of the law.

Conclusion

Dissenting opinions of judges in the Indonesian judicial system play a crucial role as a manifestation of the freedom and independence of judges that is normatively recognized in various laws, especially the Law on Judicial Power and the Supreme Court. Although the practice of dissenting opinions of judges is relatively new and has not been formally implemented for long, its regulation shows significant progress in ensuring the integrity, quality, and accountability of court decisions. The freedom to express dissenting opinions reflects respect for the complexity of cases and provides space for judges to express objective and in-depth legal interpretations.

In terms of legal certainty, the existence of different opinions of judges does not weaken the legal force of the decision but rather enriches the basis of argumentation and maintains transparency and democracy in the decision-making process in court. Differences of opinion of judges function as an internal control mechanism that encourages the quality of decisions and consistency of legal interpretation while strengthening public trust in the justice system. Thus, differences of opinion among judges are an important part of realizing a balance between legal certainty, justice, and the benefits of law in dealing with the dynamics of society and legal developments in Indonesia.

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