

# Application of Criminal Sanctions in Cases of Manipulation of Demand and Collection of Health Services Fees for Patients Participating in the National Health Insurance Program

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## Abstract

*The aim of this study is to conduct studies and analyze the weaknesses of the application of criminal sanctions on cases of manipulation of requests and collection of health care costs for patients participating in the National Health Insurance Program so far and provide solutions. The research method used is a normative juridical approach and the type is descriptive qualitative. The data used in this study is secondary data, namely by examining theories, concepts, legal principles and laws and regulations related to this research to be analyzed in order to obtain qualitative data. The conclusion of this study is that there is no formulation of criminal sanctions that are lex specialist for cases of manipulation of requests for health services for patients participating in the National Health Insurance Program. The punishment of the perpetrators of the act of manipulating the demand for fees requires various aspects, including the excesses of the punishment, both to the perpetrators and to the health service ecosystem for participants of the National Health Insurance Program. The role of Good Corporate Governance and Good Clinical Governance as a preventive effort in this case is also a very strategic matter.*

*Keywords: National Health Insurance Program; Fraud; Law enforcement.*

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## 1. Introduction

The Unitary State of the Republic of Indonesia is a country that has a large and diverse population demographic potential. The government and the state must be present in realizing a welfare state in managing the welfare of the Indonesian people seen from various aspects of this diversity. The aim of realizing a welfare state has been formulated in the Preamble to the 1945 Constitution of the Republic of Indonesia (UUD 1945) which is based on Pancasila as the moral and ethical foundation for the administration of state law.<sup>1</sup>

The description of the state's duty to realize the general welfare (welfare state) especially in the health sector is stated in the 1945 Constitution CHAPTER XA of Human Rights Article 28H paragraphs 1 and 3. The fulfillment of basic needs, especially in the health sector according to the 1945 Constitution must be properly guaranteed. Basic needs are the needs of a person to be able to function normally. To fulfill this mandate, the National Health Insurance Program was introduced through Law Number 40 of 2004 concerning the National Social Security System and Law Number 24 of 2011 concerning the Social Security Management Agency which has been started since 2014.<sup>2</sup>

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<sup>1</sup>HS Tisnanta et al, 2017, "The Dilemma of Indonesia Welfare State Challenge of Realizing Social Welfare in the Global Era", *Fiat Justitia Journal of Law Faculty of Law, University of Lampung*, Bandar Lampung, p. 236.

<sup>2</sup> Hasbullah Thabrany, 2014, *Jaminan Kesehatan Nasional*, PT RajaGrafindo Persada, Jakarta, p. 99.

In implementing the National Health Insurance Program, the concept of social insurance is used. There are still many who think that social insurance is only for the poor, but that is not what it means. Social insurance is an insurance program that is mandatory based on a law, with the aim of providing basic protection for the welfare of the community.<sup>3</sup> The advantages of choosing social insurance include being able to control health costs through setting uniform rates for health services; enabling equal distribution of doctors/health facilities throughout the country and ensuring that all residents enjoy social justice.<sup>4</sup>

The National Health Insurance Program has three pillars in implementing Social Insurance, namely: Revenue Collection, Risk Pooling, and Purchasing, which aims to ensure the availability of patterns and amounts of payments for health facilities.<sup>5</sup> From the Purchasing pillar, namely the purchase of health services, the pattern used is not by replacing Participant/Insured money when accessing health services, but by guaranteeing/benefiting comprehensive services provided in the form of services to be able to control costs or moral hazard.<sup>6</sup> Moral hazard is manifested in various fraudulent acts that can occur in the implementation of the National Health Insurance Program (JKN). Fraudulent acts can be committed by Participants/Insured, Health Service Providers, or by JKN Program managers. One of the fraudulent acts that can be done by Health Service Providers is to collect fees from Participants that are not in accordance with the provisions of laws and regulations.<sup>7</sup>

Efforts to prevent fraud in the current National Health Insurance Program which are regulated in the Minister of Health Regulation Number 16 of 2019 concerning the Prevention and Handling of Fraud and the Imposition of Administrative Sanctions Against Fraud in the Implementation of the Health Insurance Program are still based as technical efforts in preventing fraud loss of social security funds due to fraud so that the JKN Program can run effectively and efficiently.<sup>8</sup> In the Regulation of the Minister of Health, it still prioritizes administrative sanctions for perpetrators of fraudulent acts, although it is stated that it does not rule out criminal sanctions for the perpetrators. Currently, criminal sanctions for perpetrators of fraudulent acts in the National Health Insurance Program have not been regulated in the Criminal Code or other laws and regulations.

This study also aims to look at the formulation of the current application of criminal sanctions in cases of manipulation requesting and collecting health care costs for patients participating in the National Health Insurance Program and looking for weaknesses in order to find solutions to these problems.

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<sup>3</sup> Ibid, page 66

<sup>4</sup> Ibid, pp. 74-77

<sup>5</sup> Public Relations BPJS Health RI, 2015, Press Release: 2015, BPJS Health Targets Tri Success, BPJS Health, Jakarta, url:<https://bpjs-kesehatan.go.id/bpjs/dmdocuments/5db20a1fb11422d334301ed28bcb8c7.pdf>

<sup>6</sup> Hasbullah Thabrany, Op. Cit. page 107

<sup>7</sup> Regulation of the Minister of Health Number 16 of 2019 concerning the Prevention and Handling of Fraud and the Imposition of Administrative Sanctions Against Fraud in the Implementation of the Health Insurance Program, p14

<sup>8</sup> Ibid, page 1

## 2. Writing method

This research was conducted through a normative juridical approach based on an analysis of existing legal norms. Library materials consist of primary, secondary and tertiary legal materials. Primary legal materials are legal materials that are binding, seeput sources of national law relating to the formulation of the formulation of criminal acts of fraud in the National Health Insurance. Secondary legal materials, namely materials that provide an explanation of primary legal materials, among others in the form of: Writings or opinions of legal experts, especially criminal law experts regarding corruption. Tertiary legal materials that provide a more in-depth explanation of primary legal materials and secondary legal materials include: Legal Dictionary, English-Indonesian Dictionary, and various magazines, articles and legal journals. Comparative studies were also conducted to find the laws and regulations in various countries.

## 3. Results and Discussion

To discuss the problems in this study, the authors use legal theories, namely Law Enforcement Theory, Legal Responsibility Theory and Criminal Theory in Islamic Law. According to Soerjono Soekanto, the factors that can affect the effectiveness of the law are the legal factor itself; Law enforcement factors, namely the parties that form and apply the law; Factors of facilities or facilities that support law enforcement; Community factors, namely the environment in which the law applies or is applied; Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.<sup>9</sup>

For cases of manipulation of requests for and collection of health care costs for patients participating in the National Health Insurance Program, in connection with manipulation, including part of fraud, Article 378 of the Criminal Code applies Article 378 of the Criminal Code which reads: "Whoever with the intent to benefit himself or another person unlawfully by using the name falsehood or false dignity, by deceit or a series of lies, inducing another person to hand over something to him or to give a debt or write off a debt, is punishable by fraud with a maximum imprisonment of four years." The elements of the fraud offense are as follows: the element of whoever; elements with intent; elements of benefiting oneself or others; elements against the law; elements of using a false name or false dignity, by deceit or a series of lies; the element of moving others; the element of surrendering something to him or in order to give debts or write off receivables.

Regarding fraud in the insurance sector, there is a more detailed article, namely Article 381 of the Criminal Code which reads: "Whoever by deceit misleads the insurance insurer regarding conditions related to insurance so that the agreement is approved, which of course will not be approved or at least - at least not under such conditions, if the actual conditions are known, they are threatened with a maximum imprisonment of one year and four months." The elements of Article 381 of the Criminal Code are: the element of whoever; elements by means of deceit; the element of misleading the insurer regarding the conditions related to

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<sup>9</sup> Winarno Yudho dan Heri Tjandrasari, 1987, "Efektivitas Hukum Dalam Masyarakat", *Jurnal Hukum dan Pembangunan*, Universitas Indonesia, Jakarta, p. 60

the coverage; elements so that he agrees to an agreement which he certainly will not approve or at least if it is not approved under such conditions;

The subjective element is in element number 1 (whoever refers to the maker/dader) and number 5 (if the actual situation is known, refers to intentional, there is intention). The objective elements are number 2 (by means of deceit), number 3 (misleading the insurer regarding the conditions related to coverage) and number 4 (so that he agrees to an agreement which he certainly will not agree to or at least if it is agreed without conditions such).

Element number 1 in Article 382 of the Criminal Code states that the father or maker of a crime is a candidate for the insured or in terms of Sharia insurance or the National Health Insurance Program is a Participant. At the time of manufacture it was not known in the article regarding the perpetrators of fraud other than the candidate or the insured, at that time the fraud was not yet known, it could also be carried out by a health service provider (provider of the insurance insurer), so that whoever element in this article cannot be imposed on a health service provider. .

The level of understanding of the concept of fraud is not yet well understood by law enforcement officers. The socialization and involvement of stakeholders for cases of fraud/cheating is still intense with other stakeholders besides law enforcement tools, especially related agencies, namely the district/city and provincial health offices. At the central level, synergy efforts are carried out between BPJS Health, the Ministry of Health and the KPK. The KPK has limited authority as stated in Article 11 of Law Number 30 of 2002 concerning the KPK which Article 11 of the KPK Law further limits that the KPK's authority to conduct investigations, investigations and prosecutions.

Factors such as facilities or facilities, among others, currently the police have developed a complaint facility through a call center via telephone calls to 110 or to the public complaint service, namely e-dumas (precision dumas).<sup>10</sup>As for service complaints regarding health services experienced by patients participating in the National Health Insurance, BPJS Health has developed a complaint service at the care center 165, as well as by using the Mobile JKN application in the complaint feature, as well as for complaint handling officers at the Hospital and at the BPJS Health Office. . At present, bridging reports from complaints applications to BPJS Health have not been developed regarding manipulation of requests and collection of health care costs for patients participating in the National Health Insurance Program (Mobile JKN application) with a complaint reporting application at the police (Dumas Presisi). The development of society also determines which type of law applies. When society is classified as modern, the legal pattern is characterized by bureaucratic elements.

Likewise, law enforcement will be successful and effective if the community that becomes the social basis for the operation of the law is a society that is no longer traditional or charismatic.<sup>11</sup>Currently, a transparent, systematic, effective and efficient bureaucratic pattern is needed. The old bureaucratic patterns that are not constructive need to be abandoned. According to Saleh-Akhmad's analysis, the poor culture of public service includes: The culture of being served is still stronger

<sup>10</sup> <https://dumaspresisi.polri.go.id/dumaspro/>

<sup>11</sup> Esmi Warassih, 2016, *Pranata Hukum sebuah Telaah Sosiologis*, Penerbit Pustaka Magister, Semarang, p. 66-70

than the culture of serving; The service culture displayed still tends to be bureaucratic. Service procedures that still seem complicated and convoluted; Public perception to get good and fast service must go through various shortcuts. This is also due to the behavior of service personnel who still discriminate in service delivery (Saleh 2010).<sup>12</sup>

Cultural factors, namely as a result of work, creativity and taste based on human initiative in social life.<sup>13</sup> Soerjono Soekanto stated that Indonesian society is more concerned with an attitude of resolving things peacefully. It is more convenient to reach a compromise than to decide who is wrong and who is right, in the hope of resolving disputes without causing the social tensions that can then follow. The tendency to resolve without disputes is rooted in a cultural value called "shame culture" which is based on the mindset that when someone makes a mistake, as long as they don't get caught and don't lose face, they won't feel sorry or embarrassed.<sup>14</sup> The biggest calamity that occurs is when a mistake is known to others, so that the perpetrator loses face. Here the perpetrator will try his best so that the perpetrator is not reproached or cursed by others. It is not the evil act itself that is considered important, but what is more important is that the evil act will not be known to anyone. When the evil deed is finally known to others, the perpetrator becomes ashamed. In shame culture, the sanctions come from outside, namely what other people think or say and what is certain is that in this shame culture there is no question of conscience.<sup>15</sup>

Some of the complaints found in health services to patients participating in the National Health Insurance Program include: Additional fees made by health facilities, both clinics and BPJS Health partner hospitals; JKN Program participants also often pay unnecessary administrative fees; Subject to the burden of purchasing a separate drug; BPJS Health patients who seek treatment at the clinic and are subject to nebulizer or evaporation measures, will be charged Rp 90.000,00; The hospital charges additional fees for patients whose inpatient class goes up on the grounds that the rooms are full.<sup>16</sup> Looking at the above-mentioned complaints from the perspective of Criminal Liability theory, we found the following: The perpetrator (dader) in this case is the health service provider, not the Participant/Insured nor the Insurer/Insurer; The perpetrator can be a natural person (individual) or a corporation; A health care facility is a corporation.

*Dader*, from the formulation of Articles 55 and 56 of the Criminal Code according to Wirjono Prodjodikoro, it is known that there are five groups of criminal acts, namely: those who commit acts (plegen, dader); who ordered to do the deed (doen

<sup>12</sup> Nuriyanto, 2015, *Membangun Budaya Hukum Pelayanan Publik untuk Mewujudkan Kesejahteraan Rakyat*, Jurnal Integritas Komisi Pemberantasan Korupsi, Jakarta, p.19

<sup>13</sup> Sri Mulyani, 2016, "Penyelesaian Perkara Tindak Pidana Ringan Menurut Undang undang Dalam Perspektif Restoratif Justice (Adjudication Of Misdemeanor Based On Legislation In Current Perspectives)", *Jurnal Penelitian Hukum De Jure*, Volume 16, Jakarta, p. 341

<sup>14</sup> Soerjono Soekanto, 1971, "Beberapa Faktor Sosial Budaya yang Mempengaruhi Keadilan dalam Praktek Penegakan Hukum di Indonesia", *Jurnal Hukum dan Pembangunan*, Fakultas Hukum Universitas Indonesia vol 1 No 2, Jakarta, p. 4-5

<sup>15</sup> Mura P. Hutagalung, 2007, *Budaya Malu, Budaya Salah dan Budaya Hukum*, Jurnal Hukum dan Pembangunan Fakultas Hukum Universitas Indonesia, Jakarta, page 367

<sup>16</sup> Timboel Siregar, 2019, *Modus Rumah Sakit Bebani Peserta BPJS*, Tabloid Kontan Maret 2019, Jakarta, url : <https://nasional.kontan.co.id/news/modus-rumah-sakit-bebani-peserta-bpjs>

plegen, middelijke dader); who participated in the action (*medeplegen, mededader*); who persuades that the deed is done (*uitlokken, uitlokker*); which helps the deed (*medeplichtig zijn, medeplichtige*).<sup>17</sup>When someone manipulates requests and collects health care costs for JKN Program Participants, the five types of dader can occur.

According to Wirjono Prodjodikoro, deception is lying without words, but for example by showing something.<sup>18</sup> According to Samsudin Sinubu, in the insurance agreement fraud, the maker who is the insured candidate, to get his insurance approval, lies to the insurance company about the actual condition of the insured object. In which case the deception is carried out not by stating false words or a word containing more than one lie, but for example by showing a letter which contains a statement that is not true or false.<sup>19</sup>The same thing can also be done by health service providers/facilities in collaboration with the Insurer, in this case the manager of the National Health Insurance Program to the Insured or Participants of the National Health Insurance Program.<sup>20</sup>

From the meaning of the agreement, an informed consent must be such that the contents of the agreement, both written and oral, can be understood by the parties to the agreement. In the health sector, the point of connection with criminal law is the existence of errors. As far as the error goes, this is the problem. Is it true that the incident that occurred was the result of an error, especially in this case when conveying information to the patient before the patient signed an informed consent, for example, information about the condition of the room class according to the class rights was full?<sup>21</sup>

The main basis of criminal law is that people should not make mistakes. Moreover, if the result of his mistake causes the suffering of others, whether it is a deliberate mistake or just a mere negligence. In terms of criminal corporate liability, theories such as the Direct Liability (Alter Ego Liability) Doctrine and the Vicarious Liability Doctrine show that the act of manipulating the demand and collection of health care costs for patients participating in the Health Insurance Program, if known and even facilitated in the form of providing an informed consent format, is carried out leading service staff,<sup>22</sup>

In Indonesia, our positive law still consists of elements of Islamic Law, Western Law, and Customary Law.<sup>23</sup> In Islamic law, there should be no difference in treatment of humans, let alone based on social status in society. There should be no discrimination, the noblest is the most pious.<sup>24</sup> Likewise, in the application of

<sup>17</sup> Ike Indra Agus Setyowati, 2018, "Pembantuan Dan Penyertaan (Deelmening) Dalam Kasus Perkosaan Anak", *Media Juris* Jurnal Program Magister Ilmu Hukum Fakultas hukum Universitas Airlangga, Surabaya, p. 285-286

<sup>18</sup> Samsudin Sinubu, 2013, *Pemidanaan terhadap Pelaku Tindak Pidana Asuransi*, Lex Crimen Jurnal Hukum Fakultas Hukum Universitas Sam Ratulangi, Manado, p. 86

<sup>19</sup> Samsudin Sinubu, *Ibid* pp. 87

<sup>20</sup> Timboel Siregar, *Op. cit*,

<sup>21</sup> Loebby Loqman, 1991, "Aspek Hukum Pidana terhadap Informed Consent", *Jurnal Hukum dan Pembangunan* Fakultas Hukum Universitas Indonesia, Jakarta, p. 570-572

<sup>22</sup> Ari Yusuf Amir, *Doktrin-Doktrin Pidana Korporasi*, Penerbit Arruz Media, Jakarta, p. 124-131

<sup>23</sup> Sri Endah Wahyuningsih, 2013, *Prinsip-Prinsip Individualisasi Pidana dalam Hukum Pidana Islam*, Badan Penerbit Universitas Diponegoro, Semarang page 3

<sup>24</sup> Al-Quran surah Al-Hujurat (49) verse 13

criminal sanctions to health facilities which consist of professional personnel who have a respectable place in social life, there should also be no exceptions when faced with criminal law.<sup>25</sup> Criminal law in Islamic law has principles and principles, including the principle of legality (*Qawa'id Usulliyah*), the principle of personal, the principle of no crime without error, the principle of flexibility/elasticity of punishment and modification of punishment.<sup>26</sup>

Criminalization in Islamic law, especially the crime of *takzir*, is left to the policy of the authorities to provide flexibility for the development of crimes that follow technological developments so that *takzir* can accommodate all crimes other than *hudud*, *kisas* and *diat*. As for sanctions in *Jarimah takzir*, among others, can be in the form of advice, reprimand, threats, social exclusion, announcements to the public, fines and confiscation of property, imprisonment, whipping/lashing, and murder.<sup>27</sup> In the development of criminal law in Indonesia, social work crimes have been designed; criminal payment of compensation, and fulfillment of customary obligations and/or obligations according to living law; it is possible to combine types of sanctions (criminal and action); it is possible for additional penalties to be imposed as independent sanctions; it is possible for judges to impose other types of crimes that are not included in the formulation of offenses which are only threatened with a single sentence.<sup>28</sup> Sudarto gave teachings for criminal law reform to pay attention to the principle of criminal individualization, namely by paying attention to the characteristics and circumstances of the maker.<sup>29</sup>

Investigations and prosecution of fraud perpetrators in the United States are carried out across agencies such as the Ministry of Justice, Ministry of Health and the FBI which form coordinating teams such as the Health Care Fraud Prevention & Enforcement Action Team (HEAT) and the Medicare Fraud Strike Force.<sup>30</sup> In the Philippines, the administrator of the national health insurance program, Philhealth, has signed a cooperation agreement with the National Bureau of Investigation (NBI) to combat fraudulent schemes in the implementation of national health insurance. The NBI itself is an agency that functions to focus on investigating criminal events.<sup>31</sup>

<sup>25</sup>Ibid, page 105

<sup>26</sup>Ibid, 107-129

<sup>27</sup>Ibid, page 175

<sup>28</sup> Badan Pembinaan Hukum Nasional Kementerian Hukum dan Hak Asasi Manusia Republik Indonesia, 2015, *Draft Naskah Akademik Rancangan Undang-Undang Tentang Kitab Undang-Undang Hukum Pidana (KUHP)*, BPHN Kemenkumham RI, Jakarta, pp. 118-119

<sup>29</sup> Dafit Supriyanto Daris Warsito, 2018, "Sistem Pemidanaan Terhadap Pelaku Tindak Pidana Penyalahgunaan Narkotika", *Jurnal Daulat Hukum Program Magister Ilmu Hukum Fakultas Hukum Unissula*, Semarang, p. 36

<sup>30</sup>US Office of Public Affairs Department of Justice, 2012, Health Care Fraud Prevention and Enforcement Efforts Result in Record-breaking Recoveries Totaling Nearly \$4.1 Billion Largest Sum Ever Recovered in Single Year, The United States Department of Justice, Justice News, url:<https://www.justice.gov/opa/pr/health-care-fraud-prevention-and-enforcement-efforts-results-record-breaking-recoveries>

<sup>31</sup>Manila Standard, 2021, Philhealth bares 9,200 Fraud Cases, Manila, url:<https://www.manilastandard.net/news/national/349477/philhealth-bares-9-200-fraud-cases.html>

The Norwegian Criminal Code, which recognizes a double track system, recognizes two types of sanctions in the form of punishment (punishment) and special measures (special measures). Punishment consists of:

- The principal crimes consist of: Imprisonment, Jailing and Fines (fines).
- Additional penalties consist of: Deprivation of rights, Banishment from specified places, Confiscation of specific objects (confiscation of certain objects).
- Special Measures consist of: Security Measures, Preventive detention.

The new Polish Penal Code 1969 criminal sanctions are divided into two types:

- The main penalties, which are regulated in Article 30, consist of: Deprivation of liberty, Limitation of liberty, Fine (fine)
- Additional penalties consist of: Deprivation of public rights, Deprivation of parental or guardianship rights), Prohibition of occupying specific posts, following specific occupations or engaging in specific activities, Prohibition of operating motor driven vehicles, Confiscation of property, Forfeiture of objects, Publication of sentence of a special way public information.<sup>32</sup>

Heavier criminal sanctions due to repeated acts of the makers as well as the severity of the level of criminal acts can be in the form of sanctions of exile while taking into account the situation of the condition of the service required (exile can be in the form of a court order to the health office and local permits not to issue a permit in one place during the period of time) certain). Another punishment that is quite severe because it involves the good name of the perpetrator is an additional penalty in the form of announcing the judge's decision for cases that have often been repeated. Whatever type of criminal sanction that will be applied later, it must be in the spirit not only for retaliation but also with the aim of creating an orderly life in society.<sup>33</sup>

#### 4. Closing

The formulation and application of criminal sanctions in cases of manipulation of requests and collection of health care fees for patients participating in the National Health Insurance Program is still not mature. The reasons are, among others, that the existing criminal rules are still *lex generalis* (Article 378 of the Criminal Code), the perpetrators/fathers mentioned in the Criminal Code and other laws do not keep up with the times (Article 381 of the Criminal Code, as well as Article 31 paragraph 2 and Article 75 of Law No. insurance) as well as administrative sanctions that are still being put forward through regulations from the Ministry of Health. The weakness of the current condition is that there is no intensive cooperative relationship between the managers of the National Health Insurance Program and law enforcement officers in dealing with JKN fraud.

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<sup>32</sup> Barda Nawawi Arief, 2010, *Perbandingan Hukum Pidana*, PT Raja Grafindo Persada, Jakarta, p. 170-176

<sup>33</sup> Eddy O.S. Hiariej, 2016, *Prinsip-Prinsip Hukum Pidana Edisi Revisi*, Cahaya Atma Pustaka, Yogyakarta, p. 37-44



Solutions in terms of preventive efforts, it is necessary to maximize the efforts of Good Corporate Governance and Good Clinical Governance with all innovations that do not conflict with existing laws and regulations, such as declarations by top management in various forms of socialization media to counter acts of manipulation of requests and collections. The cost of health services, as well as other technological innovation efforts, simplifying informed consent forms that are not complicated and easily understood by JKN participant patients, periodic socialization of fraud prevention to medical and non-medical personnel in health facilities along with spiritual watering. For criminal sanctions that can be applied, among others, orders to refund losses to the aggrieved party plus a fine,

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