



The Impact of Pre-Trial Detention on Prison Overcrowding: Perspectives From Indonesia's Criminal Justice System

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Abstract

The decision to detain suspects in detention centers or prisons has contributed to the rising occupancy rates, leading to overcrowding in prisons. This study aims to understand the fundamental values underpinning the implementation of pre-trial detention policies in Indonesia and their impact on the increased congestion in prison facilities. The study employs a descriptive approach with a normative juridical research type. The issues are examined using statutory and conceptual approaches. Data collection is conducted through a literature review, and the data is analyzed qualitatively. The research findings reveal that the law provides a robust foundation for implementing alternative offender penalties aside from imprisonment. However, the understanding of law enforcement officers as instruments of law enforcement still tends to favour decisions on pre-trial detention and large-scale detentions. Social and political factors remain the primary basis for the application of suspect detention, subsequently driving the escalation of prison overcrowding cases.

A. INTRODUCTION

The issue of prison overcrowding in Indonesia has become an alarming phenomenon. According to data published by the Directorate General of Corrections under the Indonesian Ministry of Law and Human Rights in 2024, the occupancy rate of Indonesian prisons has reached 196% of

their intended capacity. While the prison system is designed to accommodate 135,561 individuals, it currently houses at least 265,840 inmates and detainees. Although overcrowding does not affect every prison in Indonesia, out of 526 prisons nationwide,

399 exceed their maximum occupancy capacity.¹

Several studies conducted by researchers on prison overcrowding have successfully identified several key factors contributing to the issue. Among these factors is the criminal justice policy that prioritizes punitive functions over restorative approaches,² the absence of alternative sanctions other than imprisonment for offenders,³ On the other hand, alternative sanctions to imprisonment can provide the desired positive impact on the reintegration process,⁴ Over-criminalization occurs as the law becomes a punitive tool for parties with vested interests,⁵ as well as the excessive placement of suspects in detention facilities for extended periods.⁶ Excessive pre-trial

detention, misaligned with its intended purpose, leads to a deviation in the function of law—from a tool for rehabilitation and social improvement to a punitive instrument.⁷ Based on previous research, it can be stated that pre-trial detention is one of the contributing factors to the high occupancy rates in prisons and can also have long-term negative social impacts.

Several researchers have proposed alternatives that are considered potentially effective or implementable in Indonesia to reduce prison occupancy rates. These alternatives include reducing prison

¹ Direktorat Jenderal Pemasyarakatan, "Jumlah Penghuni Lembaga Pemasyarakatan (Lapas), Rumah Tahanan Negara (Rutan), Lembaga Pembinaan Khusus Anak (LPKA), Lembaga Pemasyarakatan Perempuan (LPP)," <https://sdppublik.ditjenpas.go.id/>, diakses 10 Januari 2024.

² Theo Van Willigenburg and Eduardus Van Der Borght, "Attacking Punitive Retribution at Its Heart - A Restorative Justice Thrust," *International Journal of Public Theology* 15, No. 3 (2021): 401–425, <https://doi.org/10.1163/15697320-01530007>. p. 403.

³ Nadia Utami Larasati, Fahlesa Munabari, and Untung Sumarwan, "Prison Overcrowding: Alternative Sentencing in Indonesia's Draft Criminal Code and Its Consequences on Correctional System," *Udayana Journal of Law and Culture* 6, No. 1 (2022): 42–61, <https://doi.org/10.24843/UJLC.2021>, p. 42.

⁴ Tabinda Rani and Noor Ullah Khan, "Causes and Consequences of Overcrowding of Women Inmates in Prisons: A Case Study of Prisons in Khyber Pakhtunkhwa Province," *Pakistan Journal of Criminology* 13, No. 01 (2021): 72–85, p. 72.

⁵ Valerie Jenness, "The Social Ecology of Sexual Victimization against Transgender Women Who Are Incarcerated: A Call for (More) Research on Modalities of Housing and Prison Violence," *Criminology and Public Policy* 20, No. 1 (2021): 3–18, <https://doi.org/10.1111/1745-9133.12540>. p. 9.

⁶ Stacie St. Louis, "The Pretrial Detention Penalty: A Systematic Review and Meta-Analysis of Pretrial Detention and Case Outcomes," *Justice Quarterly* 41, No. 3 (2024): 347–370, <https://doi.org/10.1080/07418825.2023.2193624>. p.351.

⁷ Marc O. DeGirolami, "Reconstructing Malice in the Law of Punitive Damages," *Legal Studies Research Paper Series* 20, No. 18 (2020): 1–48. p. 10.

sentences,⁸ granting pardons or parole,⁹ implementing a restorative justice system,¹⁰ and even transforming the criminal justice system.¹¹ However, implementing these measures has not yet been able to reduce prison occupancy rates optimally. One alternative that is commonly discussed is the expansion of prison units.¹² Adding more correctional facilities or detention centers would alleviate overcrowding by dispersing the inmate population. However, this alternative is only a short-term solution and will create new challenges within the prison management system, such as increased demands for human resources and financial resources.

According to data published by the Directorate General of Corrections in 2023, the number of inmates in several prisons and detention centers in one province of Indonesia, specifically in West Java, reached 24,862 individuals, while the ideal capacity

is 17,036 (overcrowding by 129% of the ideal capacity). The distribution of this number includes 3,688 convicted prisoners and 20,567 pre-trial detainees. From this data, it is clear that one of the main causes of prison overcrowding is the excessive number of detainees, coupled with the lack of alternative sanctions or non-custodial pre-trial supervision.

The purpose of pre-trial detention, which involves detaining a criminal suspect before the trial process, is to facilitate investigators in conducting investigations and inquiries. It aims to minimize potential misconduct, such as evidence tampering, reduce the suspect's likelihood of fleeing, and make the interrogation process easier for law enforcement.¹³ When detained, suspects lose certain rights, particularly the right to move and act freely within society. However, the implementation of pre-trial detention has drawn the attention of several

⁸ Rai Iqsandri and Andrew Shandy Utama, "Analisa Hukum Pemberian Grasi Terhadap Terpidana Kasus Korupsi Gubernur Riau Annas Maamun," *Ensiklopedia Sosial Review* 3, No. 2 (2021): 179–186, <https://doi.org/10.33559/esr.v3i2.783>, p. 179.

⁹ *Ibid.*

¹⁰ Diego Zinedine, Dwi Hapsari Retnaningrum, and Weda Kupita, "Tinjauan Yuridis Penjatuan Pidana Penjara Lebih Singkat Dari Masa Penahanan Dalam Tindak Pidana Penyebaran Informasi Kebencian (Studi Putusan Nomor: 77/Pid.Sus/2018/PN.Bnr)," *Sudirman Law Review* 4, No. 2 (2022): 164–172, p. 165.

¹¹ Agus Budiarto and Afdhal Mahatta, "Pembaharuan Hukum Terhadap Kebijakan Pengelolaan Lembaga Masyarakat," *Law Review Volume XXI*, No. 3 (2022): 389–407, p. 403.

¹² Kaitlyn M. Sims, Jeremy Foltz, and Marin Elisabeth Skidmore, "Prisons and COVID-19 Spread in the United States," *American Journal of Public Health* 111, No. 8 (2021): 1534–1541, <https://doi.org/10.2105/AJPH.2021.306352>, p. 1535.

¹³ Adriano Martufi and Christina Peristeridou, "The Purposes of Pre-Trial Detention and the Quest for Alternatives," *European Journal of Crime, Criminal Law and Criminal Justice* 28, No. 2 (2020): 153–174, <https://doi.org/10.1163/15718174-bja10002>, p. 172.

researchers due to indications of human rights violations and breaches of humanitarian values. Moreover, it is not uncommon for various human rights issues to arise during the detention of criminal suspects in prisons or detention centers.¹⁴

Several studies have found negative impacts stemming from law enforcement decisions to detain a suspect during the investigation and inquiry process. These studies state that there has been an excessive use of detention decisions for law offenders, which has led to violations of human rights, such as the right to live freely,¹⁵ the right to be presumed innocent until proven guilty,¹⁶ and the limitation of access to legal representation,¹⁷ the excessive application of detention periods,¹⁸ and the limitations on the ability to earn a livelihood during the detention period.

The negative impacts of law enforcement decisions to implement pre-trial detention have raised several questions and brought attention to the law enforcement process in Indonesia. Detaining a suspect before trial, particularly during the investigation phase, is no longer seen as a facilitation for law enforcement, but rather as a justification for depriving the suspect of their freedom as a social consequence for the alleged crime. This occurs through imprisonment without considering other alternatives or the broader implications of the criminal punishment.

The factors driving the implementation of pre-trial detention decisions are diverse and depend on society's cultural and social developments. One key factor is formal law, which relates to the legal system applied in a particular region, the understanding or

¹⁴ Marie Claire Van Hout and Des Crowley, "The 'Double Punishment' of Transgender Prisoners: A Human Rights-Based Commentary on Placement and Conditions of Detention," *International Journal of Prisoner Health* 17, No. 4 (2021): 439–451, <https://doi.org/10.1108/IJPH-10-2020-0083>. p. 442.

¹⁵ Doortje Durin Turangan *et al.*, "The Right to Life Based on Human Rights Principles: A Normative Study of the Death Penalty in Indonesia," *Journal of The Community Development in Asia* 4, No. 2 (2021): 85–95, <https://doi.org/10.32535/jcda.v4i2.1095>, p. 85.

¹⁶ Urszula Szafrńska, "Excessive Length of Pretrial Detention in the Light of Jurisprudence of the European Court of Human Rights," *Kwartalnik Prawa Międzynarodowego* I, No. 1 (September 30, 2022): 189–218, <https://doi.org/10.5604/01.3001.0015.9891>, p. 210.

¹⁷ M.S. Trofimova, "Experience of Legal Clinics in Matters of Legal Representation of Clients' Interests: Difference of Approaches," *Proceedings of International Scientific and Practical Conference "Russia 2020 - a New Reality: Economy and Society" (ISPCR 2020)* 164, No. Ispcr 2020 (2021): 400–403, <https://doi.org/10.2991/aebmr.k.210222.079>. p. 402.

¹⁸ Yannick van den Brink, "Young, Accused and Detained; Awful, But Lawful? Pre-Trial Detention and Children's Rights Protection in Contemporary Western Societies," *Youth Justice* 19, No. 3 (December 1, 2019): 238–261, <https://doi.org/10.1177/1473225419884658>, p. 252.

interpretation of legal regulations concerning pre-trial detention, and the perspectives and mentality of law enforcement officers. These factors strongly correlate with enforcing policies, judicial processes, and sentencing practices in a region. Likewise, prevailing social norms shape the understanding of behavior tendencies in society, particularly the behavior of individuals who become suspects in cases or those involved with law enforcement.¹⁹

Based on the formulation presented in the previous section, this research aims to understand the fundamental values underlying the implementation of pre-trial detention policies in Indonesia and their impact on the increased prison overcrowding.

B. RESEARCH METHODS

The research is descriptive, using a normative juridical research type. The approaches employed are the statutory approach and the conceptual approach. Data collection is conducted through a literature review of rules and regulations

related to managing correctional facilities in Indonesia. The data used in this study include secondary data from previous research, crime rate data, and data on overcrowding in correctional facilities in Indonesia, as well as other relevant data. The collected data are then analyzed qualitatively.

C. RESULTS AND DISCUSSIONS

1. The Pre-Trial Criminal Justice System in Indonesia

Indonesia bases all its state activities and societal functions on the prevailing legal norms as a country that rules by law.²⁰ Therefore, every role within the Indonesian state, including citizens, society, and law enforcement officers, must be carried out without disregarding or containing elements that conflict with the prevailing laws. This concept of living under the rule of law is known as the concept of the supremacy of law. Law is manifested through behaviours and social order to create tranquillity, peace, and security in

¹⁹ Trevor Fronius *et al.*, "Restorative Justice in U.S. Schools: An Updated Research Review," *WestEd Justice & Prevention Research Center*, March (2019): 1–46, p. 5.

²⁰ Fernando Tumbur Josua Napitupulu and Hery Firmansyah, "The Implementation of Article 77 KUHAP Regarding Status of Suspects in Pre-Trial Criminal Justice System in Indonesia," in *Proceedings of the 3rd Tarumanagara International Conference on the Applications of Social Sciences and Humanities (TICASH 2021)*, 2022: 857–861, <https://doi.org/10.2991/assehr.k.220404.136>, p. 858.

society.²¹ Based on this, every law enforcement activity must adhere to the rules outlined in the Criminal Procedure Code (*Kitab Undang-undang Hukum Acara Pidana, or KUHAP*). The role of law enforcement officers in Indonesia, particularly regarding decisions on pre-trial detention, is regulated in Article 1, number 21 of *KUHAP*.

The authority to carry out detention during the investigation phase, before the trial process begins, is granted to investigators and public prosecutors as stipulated in Article 20 of the Criminal Procedure Code (*KUHAP*). Meanwhile, once the trial has commenced, judges are also given the authority to decide whether the detention of the suspect should continue. Detention is carried out solely based on the needs of the investigation, prosecution, and examination of the suspect. The grounds for detention are outlined in Article 21 of *KUHAP*, which states that a suspect can be detained if there is an indication of the potential to flee, destroy or tamper with evidence, and/or commit similar offenses.

Detention is carried out in three types: state, city, and house arrest. These types of detention are outlined in Article 22 of the Criminal Procedure Code (*KUHAP*). Although detention is generally carried out in state-owned facilities such as detention centers or prisons, suspects who are suspected of committing criminal offenses can be detained in their own homes, under strict supervision from investigators and public prosecutors. With this supervision, any actions or behaviors that may endanger the suspect or hinder the investigation process are minimized as much as possible.

In the context of a suspect being placed under city detention, Article 22, paragraph (3) of *KUHAP* states that in city detention, the suspect is held in their own residence, with the added obligation to report periodically to law enforcement. The suspect may travel outside the city with permission from the investigator, public prosecutor, or judge. The entire period the suspect spends in detention or prison will be used to reduce the sentence if the suspect is found guilty and their status is elevated to a defendant. For suspects under house arrest, the sentence reduction is one-third of

²¹ M Najibur Rohman, "Tinjauan Yuridis Normatif Terhadap Regulasi Mata Uang Kripto (Crypto Currency) Di Indonesia," *Jurnal Supremasi* 11, No. 2 (2021): 1–10, <https://ejournal.unisbablitar.ac.id/index.php/supremasi>, p. 2.

the total duration of house arrest, and for city detention, the reduction is one-fifth of the total duration of house arrest.

Regarding the detention period, Articles 24-29 of the Criminal Procedure Code (*KUHAP*) state that detention can be carried out for a maximum of 400 days, from the investigation process to the cassation level at the Supreme Court. The distribution of the detention period consists of detention at the investigation stage for 20 days, with a flexibility for an extension of up to 40 days. At the prosecution stage in the prosecutor's office, the detention period is 20 days, with an extension of up to 30 days. At the district court examination level, the detention period is 30 days, with an extension of up to 60 days. At the appeal level, if requested, the detention period is 30 days, with an extension of up to 60 days, and at the cassation level at the Supreme Court, the detention period is 50 days, with an extension of up to 60 days. In cases where law enforcement cannot complete the investigation, prosecution, or examination within the prescribed time, the suspect must be released by law, and the determination of the detention period must be stated in the court decision.

During the detention period, there are several rights that a suspect must be

granted, such as the right to legal assistance, the right to be informed of the reasons for arrest and detention, and the right to communicate with family members. During the detention process, no individual can be treated arbitrarily and must be protected from all forms of violence. When the detention period ends, law enforcement will consult with investigators to decide whether to proceed with the case. The suspect must be released if there is insufficient evidence to move the case forward.

However, in practice, the detention system has flexibility. Its duration can vary greatly, depending on the type of legal violation and other factors that may influence the matter. It must be understood that the law enforcement process is a manifestation of legal interests, so its implementation will heavily depend on the understanding and perception of law enforcement officers and their perspective on a legal violation. Additionally, this perspective will depend greatly on understanding legal drafting and formulation. In other words, law enforcement is highly dependent on the

implementers of the law, namely the law enforcement officers.²²

Law enforcement officers play a key role in the pre-trial detention process, and the considerations they make during this process serve as the basis for determining the duration of the suspect's detention. Therefore, the legal framework governing pre-trial detention must be structured in a way that considers law enforcement's effectiveness and efficiency in preparing suspects for trial. The pre-trial process, especially during the investigation stage, varies significantly across cases, depending on the evidence availability and law enforcement officers' capacity to uncover and identify the necessary evidence.

A transformation in the perspective of law enforcement officers is needed to interpret the application of pre-trial detention, so that a restorative approach becomes the main factor driving the decision for detention. The application of detention in cases of minor crimes or victimless offenses, such as drug abuse,

deviant behavior, or gambling, requires a rehabilitative approach rather than punitive punishment. Furthermore, a detention period governed by non-discriminatory rules can lead to excessive and excessive detention durations. For example, detention decisions in serious crimes, such as corruption or murder, and decisions in victimless or minor crimes, are often based on the same legal provisions. This could lead to significant human rights violations when pre-trial detention lasts longer than the eventual criminal sentence imposed by a judge, as seen in cases of hate speech or offenses related to unpleasant behavior,²³ or in criminal cases involving minors.²⁴

2. The Impact of Pre-trial Detention on Overcrowding

In several studies, it has been found that the implementation of pre-trial detention is based on legal rules and policy frameworks.²⁵ In addition, the provisions regarding pre-trial detention must be able to accommodate international legal standards

²² Haeranah *et al.*, "Comparison of The Pretrial System in Indonesia and The US," *International Journal of Education, Vocational and Social Science* 2, No. 3 (2023): 153–167, p. 156.

²³ Zinedine, Retnaningrum, and Kupita, *op. cit.*, p. 166.

²⁴ Genoveva Allicia K S Maya dan Erasmus A. T. Napitupulu, *Anak Dalam Ancaman Penjara: Potret Pelaksanaan UU SPPA 2018 (Riset Putusan Peradilan Anak Se-DKI Jakarta 2018)* (Jakarta: Institute for Criminal Justice Reform (ICJR), 2019) p. 1.

²⁵ Sugeng Sutrisno, "Pre-Trial in the Criminal Justice System in Military Criminal Judges in Indonesia," *International Journal of Business and Social Science Research* 2, No. 11 (2021): 1–9, <https://doi.org/10.47742/ijbssr.v2n11p1>, p. 6.

and the interests of national stability.²⁶ The main objective is to protect the interests of the investigation while ensuring that the suspect is not treated arbitrarily and is presumed innocent until proven guilty in court.²⁷ Thus, the application of the pre-trial detention system is fundamentally a system that prioritizes legal interests, as its goal is to ensure that the law is properly enforced against criminal suspects and to confirm that the suspect is indeed guilty of a specific offense.

In almost all the laws enacted worldwide, the decision to impose detention is considered a last resort and is only carried out when deemed necessary or when failing to do so could potentially hinder the investigation or inquiry process. Some countries even state that detention is a last resort, considered an extraordinary measure within the application of the judicial system.²⁸ However, in practice, detention is a common decision almost categorized as inevitable. A study has stated that, generally, there is a tendency for suspects to be detained for a period ranging

from weeks to months immediately after they are declared a suspect in a criminal case.²⁹

In general, detention is caused by three main factors: discretion in taking legal action, legal violations, and the tightening of laws to minimize the possibility of release. The legal provisions applied in Indonesia are not the primary cause of the high level of pre-trial detention. The interpretation driven by policies to determine the imposition of detention is a key factor in the abuse of pre-trial detention. In a theoretical context, law is formed as an instrument to protect human rights while ensuring the security of the state. Additionally, every rule within a law requires law enforcement to take the strongest foundation, considering all possible releases as part of fulfilling human rights.

The legal instruments most involved in the policy-making of detention are investigators, public prosecutors, and judges. There are several cases with similar characteristics that result in different

²⁶ Catherine Heard and Helen Fair, *Pre-Trial Detention and Its Over-Use Evidence From Ten Countries* (London: University of London, 2019), p. 32.

²⁷ Vinicius Gorczeski, *Pretrial Detention and Its (Ab)Use in Brazil: Pathways to Overcome Prison Overcrowding and a Rule of Law Issue*, *MTA Law Working Papers* (Budapest, 2019), p. 3.

²⁸ Haeranah *et al.*, "Comparison Of The Pretrial System In Indonesia And The US," *International Journal of Education, Vocational and Social Science* 02, No. 03 (2023): 153–167, p. 155.

²⁹ Stacie St. Louis, *op. cit.*, p. 364.

lengths of pre-trial detention. Furthermore, the perspective or view of law violators should not be the same, as the underlying factors of the violation may differ. For example, drug offenders and robbers are generally detained for an extended period before the trial process is carried out against them. It is understandable that the law establishes the parameters for applying pre-trial detention as an effort to minimize the potential for suspects to obstruct investigations, destroy evidence, or flee. However, its implementation cannot be based solely on assumptions, without a factual scientific assessment. The discretion given to law enforcement in determining detention becomes a strong factor in the excessive imposition of pre-trial detention.

In addition to poor decision-making, the application of pre-trial detention is sometimes driven by law enforcement behavior that does not always adhere to the law. Detention is frequently carried out in theft cases without considering the value of the victim's loss. Meanwhile, suspects who tend to have lower levels of education and economic backgrounds are unable to assert their rights as suspects due to helplessness and fear when faced with law enforcement. As stated in Article 31 paragraph (1) of the

Indonesian Criminal Procedure Code (*KUHAP*), suspects can request a suspension of detention, with or without a guarantee in the form of money or a person. However, this provision is not widely known, and the socialization of this rule is very limited, generally understood only by those involved in the legal field. Restorative justice is also only practiced during the trial phase. During the investigation stage, suspects are usually detained either in detention houses or prisons, sharing cells with other offenders. This mixing encourages the blending of new offenders with habitual offenders, which often leads to the further entanglement of individuals with the law.

Another factor is the tightening of the law that encourages the imposition of detention on a suspect. The application of the law demands equality for every individual it governs. No citizen of Indonesia is treated differently under the law when they commit a legal violation. However, the strict enforcement of the law is generally found in common criminal offenses and not in special criminal offenses like corruption cases. In corruption cases, the likelihood that a suspect will not be detained before the trial is much higher

compared to common criminal cases. At the same time, the number of common criminal cases far outweighs the number of corruption cases, with the former being much more dominant. Law enforcement must consider various factors, such as the frequency of the crimes committed, whether the case involves a first-time offender or a recidivist, or the economic and social capabilities of the suspect to flee. It is not uncommon for suspects with low economic and social potential to be detained in prison or detention houses before the trial, especially when fleeing is considered a very difficult option for them.

Indonesia has implemented several regulatory changes, such as the application of restorative justice in minor criminal cases, but its implementation has not yet been able to minimize the use of detention policies. Additionally, while the maximum detention period has been regulated, it does not adequately accommodate the interests of offenders in minor crimes because detention extensions can still be made, potentially leading to violations of rights where the detention period could exceed the legal sentence imposed. However, as previously mentioned, legal provisions are merely

instruments that can be used as options by law enforcement. Law enforcement must be able to set aside political and cultural factors when making detention decisions so that the supremacy of the law can be achieved effectively. Several studies indicate that public discourse and socio-political upheavals still influence the decision to impose detention on a suspect.³⁰

Excessive detention decisions, in turn, push offenders who could have been placed in more appropriate facilities, such as in cases of drug abuse, into detention facilities like prisons or detention houses. This movement significantly contributes to overcrowding in prisons, which leads to various negative impacts on the fulfillment of human rights, the spread of dangerous diseases, and the potential for reoffending and recidivism. Pre-trial detention is not only often made on a basis that typically does not achieve high-quality outcomes but is also still applied excessively, driving the overcrowding of prisons.

D. CONCLUSIONS

The legal system in Indonesia has regulated law enforcement officials in making pre-trial detention decisions.

³⁰ Catherine Heard and Helen Fair, "Pre-Trial Detention and Its Over-Use: Evidence From Ten Countries" (London, UK, 2019), p. 16.

However, the legal interpretations arising from these provisions are still highly varied. Pre-trial detention is often used as an instrument to satisfy the public or calm social unrest caused by a criminal act. Therefore, the policy of detaining a suspect is not only based on legal grounds but is also driven by social pressure or public demand, even though the criminal investigation has not been completed. Law enforcement officials are not instruments meant to satisfy public desires, but rather tools for optimizing law enforcement, fulfilling the role of law as a means to enhance public security and comfort. The high number of decisions to detain suspects during the investigation phase or pre-trial detention has proven to contribute to increased occupancy in detention facilities and prisons. This high occupancy rate then leads to overcrowding and various negative impacts, such as violence within prisons, suboptimal rehabilitation and behavior correction functions, and an increase in recidivism cases.

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