

Legal Protection of Local Product of Tambora Coffee as A Product of Geographical Indications in West Nusa Tenggara Province

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ABSTRAK

Artikel ini merupakan penelitian hukum yang membahas perlindungan hukum produk kopi tambora lokal sebagai produk indikasi geografis di Provinsi Nusa Tenggara Barat (NTB). Penulisan artikel ini bertujuan untuk menganalisis bentuk perlindungan hukum bagi produk kopi Tambora lokal sebagai produk indikasi geografis di Provinsi NTB. Metode yang digunakan adalah penelitian hukum normatif, dengan beberapa pendekatan yang digunakan, yaitu pendekatan perundang-undangan, pendekatan konsep, pendekatan sejarah, dan pendekatan analitis. Temuan dari penelitian ini adalah bahwa fakta hukum belum optimal dalam upaya perlindungan hukum bagi produk kopi Tambora lokal sebagai produk indikasi geografis oleh pemerintah daerah di NTB. Diskusi dari penelitian ini menemukan bahwa upaya perlindungan hukum bagi produk kopi tambora lokal sebagai produk indikasi geografis oleh pemerintah daerah di NTB tidak optimal. Pemerintah daerah di NTB perlu menjamin perlindungan hukum untuk kopi Tambora sebagai indikasi geografis guna mempertahankan keunikan produk lokal sebagai identitas daerah sehingga dapat

menghindari klaim dari daerah lain terhadap produk kopi Tambora lokal agar dapat bersaing secara nasional maupun internasional. Kesimpulannya, perlindungan hukum bagi produk kopi Tambora lokal sebagai produk indikasi geografis di Provinsi NTB belum optimal. Kurangnya perhatian dan pengawasan oleh pemerintah daerah dalam melindungi produk kopi Tambora lokal sebagai indikasi geografis setidaknya ditandai oleh tidak adanya produk hukum daerah berupa Peraturan Daerah (Perda) dan/atau Peraturan Kepala Daerah (Perkada) yang menjamin perlindungan hukum bagi produk kopi Tambora lokal sebagai produk indikasi geografis. Begitu pula, implementasi perlindungan hukum dan pengawasan terhadap produk kopi Tambora lokal sebagai produk indikasi geografis di Provinsi NTB masih cenderung lemah. Pemerintah daerah di NTB lalai dalam menjamin pengawasan dan perlindungan hukum bagi produk kopi Tambora lokal sebagai indikasi geografis. Meskipun demikian, tidak menutup kemungkinan bahwa kopi Tambora dapat dijual sebagai produk yang tidak hanya layak dijual di daerah tetapi juga dapat bersaing di pasar nasional dan internasional.

Kata kunci: indikasi geografis; kopi Tambora; Nusa Tenggara Barat; perlindungan hukum; produk lokal

ABSTRACT

This article is a legal research that discusses the legal protection of local tambora coffee products as a product of geographical indications in the province of West Nusa Tenggara (NTB). Writing this article aims to analyze the form of legal protection for local Tambora coffee products as a product of geographical indications in the Province of NTB. Method the method used is normative legal research, with several approaches used, namely, the statutory approach, the concept approach, the historical approach, and the analytical approach. Novelty , from this research it was found that legal facts had not been optimal in legal protection efforts for local Tambora coffee products as a product of geographical indications by the local government in NTB. The discussion from this study found the fact that legal protection efforts for local tambora coffee products as a product of geographical indications by the local government in NTB were not optimal. The local government in NTB needs to guarantee legal protection for Tambora coffee as a geographical indication in order to maintain the uniqueness of local products as a regional identity so as to avoid claims by other regions for local Tambora coffee products to be able to compete nationally and internationally. In conclusion , legal protection for local Tambora coffee products as a geographical indication product in NTB Province is not optimal. The lack of attention and supervision by the regional government in protecting the local Tambora coffee product as a geographical indication is at least indicated by the absence of

regional legal products in the form of Regional Regulations (Perda) and/or Perkada which guarantee legal protection for local Tambora coffee products as a geographical indication product. Likewise, the implementation of legal protection and supervision of local Tambora coffee products as a product of geographical indications in the province of NTB still tends to be weak. The local government in NTB neglected to guarantee supervision and legal protection for local Tambora coffee products as a geographical indication. Even though it does not rule out the possibility that Tambora coffee can be branded /marketed as a product that is not only worth selling in the region but can also compete in national and international markets.

Keywords: *geographic indication; tambora coffee; West Nusa Tenggara; legal protection; local product*

INTRODUCTION

A Geographical Indication is a sign indicating the area of origin of a good, which due to geographical environmental factors including natural factors, human factors, or a combination of the two factors, gives certain characteristics and quality to the goods produced. Indonesia is a country that is rich and abundant in natural resources. The wealth of these natural resources grows a wide variety of uniqueness, both biological and vegetable, so that it provides various kinds of potential for extraordinary natural gifts so that from this potential it results in plant-based and biological cultivation that characterizes the geographical location. the potential exists. (Yessiningrum et al., 2015)

Geographical Indications are part of Intellectual Property Rights. (Elfany Shavira & Adhi Nugroho, 2021) The term Intellectual Property Rights (HKI) is a translation of *Intellectual Property Rights* (hereinafter referred to as IPR) which is described as rights to property arising from human intellectual abilities. (Purnamawati, 2016) Geographical Indications include assets that can be used as a means for the welfare of society in a country, especially regions. Thus, so that these Geographical Indications can truly provide benefits to an area and or community who are entitled, there is a need for Legal Protection. . (Yessiningrum et al., 2015)

The regulation and legal protection of geographic indications are regulated in Law no. 20 of 2016 concerning Marks and Geographical Indications. (Indonesia, nd) The protection of Geographical Indications aims to protect these uniqueness from counterfeiting or improper use and at the same time provide opportunity and protection for the people of the area where the typical product is produced to get the maximum benefit from the particular product.

Geographical indications are a business strategy in where the Geographical Indication can provide added commercial value to a product related to originality and product limitations that cannot be produced in other regions. (Yessiningrum et al., 2015)

Geographical Indications are not only of economic value but also of cultural value, regional and national pride. Geographical indications inform consumers that the goods are produced from a certain location in where the influence of the surrounding environment produces quality goods with certain characteristics that continue to maintain its reputation. (Irawan, 2017)

Indonesia as a country that has a lot of potential for Geographical Indications must move quickly to provide protection. Evidently, weak protection has been exploited by other parties who do not have the right to recognize it as their property and commercialize it to gain economic benefits. Case examples include the case of claiming the Gayo Coffee brand name by the Dutch. On 15/07/1999 the word "*Gayo Mountain Coffee*" was registered by European Coffee Bv having the address Zwarteweg 6 B NL- 1412 GD Naarden Paises Bajos via CTM register 001242965, class 30 with types of goods *Coffee, tea, cocoa, sugar and artificial coffee* and the case of Toraja Coffee, the name Toraja Coffee has been used overseas and registered as a trademark for types of coffee goods and preparations. For example, in the United States there are three trademark registrations using the word TORAJA The following is a picture of a Toraja house. Registration and commercialization of Indonesian geographical indications by unauthorized parties must be stopped. Indonesia must be more serious about protecting the potential of Geographical Indications through improving legal regulations and empirical actions that confirm the existence of geographical indications owned by areas throughout Indonesia. (Irawan, 2017)

West Nusa Tenggara Province also has various potentials accompanied by their advantages. The Province of West Nusa Tenggara has eight Regencies and two Cities which are located in the archipelago and mountainous areas. (Budy Wiryono, Joni Safaat Adiansyah, Nurhayati, 2021) Administratively, West Nusa Tenggara consists of 2 cities and 8 districts 117 sub-districts and 1,140 villages/wards which are divided into two islands namely: Lombok Island (5,435 km): West Lombok Regency, Central Lombok Regency, East Lombok Regency, North Lombok Regency and Mataram City and Sumbawa Island (15,426.20): Sumbawa Regency, Dompu Regency, Bima Regency, West Sumbawa Regency and Bima City. (NTB

REGIONAL GOVERNMENT, 2022) Thus NTB has a lot of natural wealth that has the potential to be a geographical indication.

Based on data in *the listing* of Geographical Indications at the Directorate General of Intellectual Property, KEMENHUM and HAM RI, there are 159 from various regions throughout Indonesia that have been officially registered as Geographical Indications. With all the natural wealth and potential owned by NTB, there are 5 geographical indications that have been officially registered at DGIP at among them are:

Table 1. list of geographical indications in NTB. (Directorate General of IntellectualProperty. Ministry of Law & Human Rights, 2022)

IG name	Number	Origin	Date
Sumbawa Horse Milk	IG. 24.2011.000001	NTB	Mon, September 10, 2018
Lombok Kangkung	IG. 24.2011.000002	NTB	Mon, September 10, 2018
Sumbawa Honey	IG. 24.2011.000003	NTB	Mon, September 10, 2018
Tambora Robusta Coffee a	IG. 00.2017.000003	NTB	Sat, 15 September 2018
Lombok Pearl	E- IG.24.2019.000013	NTB	Fri, 19 June 2020

Bima Regency is one of the Autonomous Regions in West Nusa Tenggara Province, directly adjacent to the eastern tip of Sumbawa Island. Geographically, Bima Regency is located at 117°40"-119°10" East Longitude and 70°30" South Latitude. Topographically, most of the Bima Regency area (70%) is highlands with mountainous textures while the rest (30%) is plains. One of the mountains in Bima district is Mount Tambora which is located in Tambora sub-district, Bima district. (The Supreme Audit Agency of the Republic of Indonesia, 2023)

Tambora is known not only for its mountains and craters but also as one of the best coffee producers in NTB. (*IKM OI AMMO COFFE: Taste of Tambora Coffee*, 2023) Coffee is one of the plantation commodity products that has a fairly high economic value among other plantation crops and plays an important role as a source of foreign exchange but is also a source

of income for not less than one and a half million the soul of coffee farmers in Indonesia. (Siswanto & Ratnaningsih, 2021) In line with the direction of developing Robusta coffee by the West Nusa Tenggara government, the slopes of Mount Tambora are the main target areas focused on developing Robusta coffee. Increasing the competitiveness of Robusta coffee in the region is a strategic effort to expand domestic and international market share. (Aklimawati et al., 2014)

Based on the description above regarding "Legal Protection of Tambora Coffee Local Products as a Geographical Indication Product in West Nusa Tenggara Province" it becomes important to research with the formulation of the problem of legal protection for local Tambora coffee products as a Geographical Indication product in West Nusa Tenggara and how to implement legal protection on local Tambora coffee products as a geographical indication product in the province of West Nusa Tenggara.

RESEARCH METHOD

This study uses the research method of Normative Legal Research, which is library law research which refers to legal norms contained in statutory regulations. (Soekanto & Matmuji, 2009) The approach used in this study uses an approach Legislation (*Statute Approach*) This approach is basically carried out by examining all laws and regulations that are related to the problems (legal issues) that are being faced. (Prof. Dr. Irwansyah, S, H., 2021) The types and sources of data used are the types and sources of secondary data which are sourced and consist of primary legal materials, secondary legal materials and tertiary legal materials. The data collection technique that will be processed in this study is to use a literature study technique with secondary data by collecting various statutory provisions and collecting literature related to the problem in research through the steps: Determining secondary data sources (primary and secondary legal materials), Identification of necessary secondary data (primary and secondary legal materials), Inventory of data in accordance with the formulation of the problem by quoting or recording, as well as Studying the data that has been collected to determine its relevance to the needs and formulation of the problem. The data analysis technique used in this study uses quantitative analysis methods, namely, describing data in a quality manner in the form of regular, coherent, logical, non-overlapping, and effective sentences, facilitating data interpretation and analysis so as to get answers to the problems in this study.

RESULTS & DISCUSSION

Based on the history of regulation, geographical indications are regulated in Law Number 14 of 1997 concerning Marks. Subsequently, it was amended by Law Number 15 of 2001 concerning Marks, then amended again by Law Number 20 of 2016 concerning Marks and Geographical Indications. In Law Number 20 of 2016 concerning Marks and Geographical Indications, the arrangements for Geographical Indications are contained in Articles 53-71. (Rirahman, 2019) Regional cooperation in the field of intellectual property rights, especially brands, is also related to the *ASEAN Intellectual Property Rights ASEAN IPR Action plan (2011-2015)*. The action plan is aimed at developing creativity and innovation supported by a trademark registration system that provides more services to the business world, and can increase networking and coordination, capacity building, public awareness, as well as the contribution of the intellectual property rights industry, especially the legal protection of trademarks to increase the power of competitiveness and development. At least, there are four main elements of geographic indications in the TRIPS Agreement, namely:

1. Geographical names for identification are not absolute but relative because non-geographical names can be used.
2. The regional element within the country as a place of production is not identical with the administrative area but is adjusted to the factual conditions.
3. The element of ownership in a geographical indication is not an individual right (*private right*) but a communal right, so a Geographical Indication is the right to use (*right to use*).
4. Elements of quality, reputation, or other characteristics that are alternative, then an item is sufficient to fulfill one of these elements. (Rifai, 2017)

In the era of free trade, IPR is an important factor to create a fair free trade system, in which plays an important role, especially to protect the general public against counterfeiting of goods and services that piggyback on an item or service that is already known as good quality and superior goods and services. One of the provisions in the WTO is trade aspects related to IPR or *Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPs)*. The TRIPS Agreement is an agreement that regulates trade aspects that require protection of IPR which is an international standard and must be used in relation to IPR, including Marks. (Rifai, 2017)

West Nusa Tenggara Province is one of the coffee production centers in Indonesia. One of the coffee production centers in NTB Province is in Dompu Regency with an area of 1,230 hectares and production of 70,217 tons in 2013 and 76,180 tons in 2014 with the same area.

One of the coffee production centers in Dompu Regency is in Tambora Village, Pekat District. The demand for coffee in Tambora Village is quite high, especially for Robusta coffee. Consumer interest in robusta coffee from Tambora Village is evidenced by the cooperation that exists between farmers and exporters through intermediary wholesalers. There are also those who do the processing to become ground coffee products to meet consumer demand by *agro-industry players*. (AK SF, 2020)

Based on its history, after the eruption and eruption of Mount Tambora on April 10, 1816, the soil became more fertile. No wonder on 7 September 1893 Sultan Abdullah (King of Sanggar) made an agreement with *D. Nelles* (Representative of the Kingdom of the Netherlands) to make coffee processing in Tambora. In 1930 *the Swedish Federation of Cooperatives* represented by *Dr. Gosta Bjorklund* opened a coffee plantation and factory with a land area of 56,000 hectares. At the end of 1957 there was President Soekarno's policy of nationalizing foreign companies in Indonesia. From 1968-1970, Tambora coffee was managed by the regional government of Bima. In 1971-1973 the regional government of Bima worked same with PT. Banyu Aji Bimasena (PT. BAB) as manager, and starting in 1974, PT. BAB was fully entrusted with processing Tambora coffee and it was only in 1976 that PT. CHAPTER obtains HGU (Hak Guna Usaha). In Dutch, *onderdeming* means garden, because since 1893 the Tambora coffee plantation has been managed by *D. Nelles*, an extension of the Kingdom of the Netherlands. In addition to coffee plantations, there are also workers' houses and a coffee factory, as well as a coffee grinder machine branded *The Engelberg Huller Co*, made in *Syracuse, New York USA*. This machine is still used today, although not as strong as before. This machine is a witness to the existence of European coffee experts in Tambora, and indicates that Tambora coffee has world-class quality. (M. Rendi Aridhandi, 2019)

For Indonesia, the provisions on Geographical Indications are included in the legal provisions on marks. At first glance, it seems that marks can protect geographical indications, even though the trademark protection system is different from the system for protecting Geographical Indications. where the mark is protected individually while the Geographical Indications are protected communally, then the nature of the mark does not indicate the quality of the product, the Geographical Indication shows the quality, reputation and characteristics including the geography where the product is located in the area of production. In practice, it is indeed possible to use marks and Geographical Indications side by side for the same product. (Rirahman, 2019)

Regional Governments have a strategic role in fostering and supervising their regions because based on Law Number 23 of 2014 concerning Regional Government Chapter I concerning General Provisions Article 1 point 5 states that government affairs are governmental powers which are the authority of the President whose implementation is carried out by state ministries and administrators. Regional Government to protect, serve, empower and prosper the community. In Article 12 paragraph (3) of Law Number 23 of 2014 concerning Regional Government, agriculture is a concurrent government affair which includes optional government affairs. (Rirahman, 2019)

As of Saturday 15 September 2018 Tambora Robusta Coffee through DJKI has been registered as one of the geographical indication products owned by the NTB region with number IG.00.2017.000003. (Directorate General of Intellectual Property. Ministry of Law & Human Rights, 2022) Tambora coffee is reported with the type rice-based coffee and ground coffee. Sevia Akmili (Director General of Intellectual Property Ministry of Law & Human Rights, 2018) reported Tambora Coffee as a Geographical Indication.

As a follow-up to Article 70 of Law No. 20 of 2016 concerning trademarks and geographical indications to provide protection, supervision and preservation of local products with geographical indications, the City of Bima has issued PERWALI Kota Bima No. 17 of 2022 Mayor regulations (PERWALI) concerning Intellectual Property Management (WALI KOTA BIMA, 2022) and Sumbawa Regency has issued regional regulation Sumbawa district number 6 of 2017 concerning the protection of local products (Central Government, 2018) . Meanwhile, the Bima district government, which already has local Tambora coffee products that are registered as geographical indications, does not yet have a PERDA that regulates legal protection for local products as well as intellectual property in the Bima district.

Legal protection with the character of collective or communal ownership is in line with Indonesian values which value shared ownership more than private ownership, namely with Geographical Indications. With the existence of Articles 70 and 71 of Law Number 20 of 2016 concerning Marks and Geographical Indications. The Regional Government of the Bima Regency must maximize the authority that has been given. Not only registration of a product but furthermore, in the implementation of guidance and supervision of Geographical Indications the Regional Government must pay attention to good *governance*. The Regional Government in terms of this authority, if it does not implement it, it may result in the elimination of the Geographical Indication of tambora coffee which has been registered in accordance with Article

61 of Law Number 20 of 2016 concerning Marks and Geographical Indications. (Rirahman, 2019)

The implementation of the protection of geographical indications is contained in the Lawsuit on trademark infringement Article 83 and Article 84 of Law No. 20 of 2016 concerning marks and Geographical Indications. Lawsuits can also be filed by well-known brand owners based on court decisions, as well as lawsuits filed with the Commercial Court. The owner of a registered mark and/or the recipient of a registered Mark License may file a lawsuit against other parties who unlawfully use a Mark that is similar in principle or in its entirety to similar goods and/or services in the form of a claim for compensation and/or cessation of all actions related to the use the brand.

Furthermore, the provisions of Law Number 20 of 2016 Article 84 states:

1. As long as it is still under examination and to prevent greater losses, the owner of the mark and/or the licensee as the plaintiff may submit a request to the judge to stop the production, distribution and/or trading of goods and/or services that use the mark without rights.
2. In the event that the defendant is demanded to hand over goods that use the mark without rights, the judge can order the delivery of the goods or the value of the goods to be carried out after the court decision has permanent legal force. (Rifai, 2017)

Regarding Alternative Dispute Resolution, it is regulated in Law Number 20 of 2016 Article 93 which states: "*In addition to the settlement of lawsuits as referred to in Article 83 the parties can resolve disputes through arbitration or alternative dispute resolution*". Apart from resolving disputes in the Commercial Court, it is also possible to have alternative efforts outside the court. Alternative dispute resolution is a dispute resolution institution through procedures carried out outside the court, in where the mechanism is left entirely to the parties to the dispute. These procedures can take the form of mediation, negotiation, conciliation, and other methods chosen by the disputing parties. (Rifai, 2017)

Furthermore, the civil provisions regarding civil lawsuits based on fraudulent acts on well-known brands, in Article 83 paragraph 2 of Law No. 20 of 2016 concerning Marks and Geographical Indications states "*Laws as referred to in paragraph (1) may also be filed by well-known Mark owners based on court decisions*". The elucidation of the article states "*Granting the right to file a civil lawsuit based on fraudulent acts committed by other parties is intended to provide legal protection to owners of well-known marks even though they have not been registered*". Accordingly, in the dispute resolution section, the Lawsuit

Section for Trademark Infringement is added with the provision that lawsuits can also be filed by well-known Mark owners based on court decisions. (Rifai, 2017)

The implementation of the protection of geographic indications is in accordance with the criminal provisions contained in Article 100 of Law no. 20 of 2016 concerning Marks and Geographical Indications states:

1. Any Person who without rights uses a Mark which is the same in its entirety as a registered Mark belonging to another party for similar goods and/or services produced and/or traded, shall be subject to imprisonment for a maximum of 5 (five) years and/or a fine of a maximum Rp. 2,000,000,000.00 (two billion rupiah).
2. Any person who unlawfully uses a Mark which is similar in principle to a registered Mark belonging to another party for similar goods and/or services produced and/or traded, shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of a maximum Rp. 2,000,000,000.00 (two billion rupiah).
3. Everyone who violates the provisions referred to in paragraph (1) and paragraph (2), whose type of goods causes health problems, environmental disturbances, and/or human death, shall be punished with imprisonment for a maximum of 10 (ten) years and/or a fine. a maximum of IDR 5,000,000,000.00 (five billion rupiah).

Article 101;

- 1) Everyone who without rights uses the sign that having similarities in its entirety with Geographical Indications belonging to other parties for the same or similar goods as registered goods, shall be subject to imprisonment for a maximum of 4 (four) years and/or a fine of a maximum of Rp. 2,000,000,000.00 (two billion rupiahs) .
- 2) Any person who unlawfully uses a sign which is similar in principle to a Geographical Indication belonging to another party for goods which are the same or similar to the goods registered, shall be punished with imprisonment for a maximum of 4 (four) years and/or a fine of up to Rp. 2,000,000 000.00 (two billion rupiah).

Article 102;

Everyone who trades goods and/or services who are known or reasonably suspected of knowing that said goods and/or services are the result of a crime as referred to in Article 100 and Article 101 shall be subject to imprisonment for a maximum of 1 (one) year or a fine of a maximum of Rp. 200 000,000.00 (two hundred million rupiah).

Article 103;

The criminal acts referred to in Article 100 to Article 102 are complaint offenses . (Rifai, 2017) According to the Academic Text of the Mark Bill, with the proliferation of mark forgeries, Law Number 20 of 2016 concerning Marks and Geographical Indications must provide legal certainty, so counterfeiting must be overcome, this is to encourage and drive the nation's economy . With regard to law enforcement, the accommodation of provisions on trademark crimes that threaten the health and or safety of human souls and the environment should be appreciated. With the increasing prevalence of violations or misuse of trademark rights which endanger health, safety of the human soul and the environment so that a deterrent effect arises from committing violations and counterfeiting, the criminal sanctions of fines and penalties for violations of marks should indeed be tougher. (Rifai, 2017)

CONCLUSION

Legal protection for local Tambora coffee products as a Geographical Indication product in West Nusa Tenggara has not been maximized. This is indicated by the absence of Regional Regulations/Perkada regarding legal protection for local products as products of geographical indications. Nationally, there has been Law no. 20 of 2016 concerning Trademarks and Geographical Indications articles 51-73, but the NTB Provincial Government, the Bima Regency Regional Government, and the Dompu District Government have not yet followed up, to form their derivative regional regulations as a guarantee of legal protection for local Tambora coffee products as Geographical Indication products.

The implementation of legal protection and supervision of local Tambora coffee products as a product of geographical indications in the province of West Nusa Tenggara still tends to be weak. The local government in NTB neglected to guarantee supervision and legal protection for local Tambora coffee products as a geographical indication. Even though it does not rule out the possibility that Tambora coffee can be *branded* /marketed as a product that is not only worth selling in the region but can also compete in national and international markets.

From the indications of negligence by the local government in NTB in protecting the local Tambora Coffee product as a geographical indication, it does not rule out the possibility that the product that has been registered with the Directorate General of Intellectual Property

(DJKI) may have its protection removed as a geographical indication. For this reason, the local government in NTB needs to:

1. The local government in NTB must establish a regional regulation/perkada concerning legal protection and supervision of local tambora coffee products in order to preserve and provide guarantees of legal certainty as a product of geographical indications in NTB.
2. The local government in NTB must campaign/socialize to introduce Tambora coffee widely so that an educated community is formed regarding the quality of local Tambora coffee products that are competitive nationally and internationally.

Local governments must develop the quality of local Tambora coffee products which, if they can penetrate national/international markets economically, can increase regional economic capacity and help improve the welfare of stake holders related to tambora coffee.

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