

CONSTRUCTION OF DRUG ABUSE HANDLING THROUGH A DRUG COURT MODEL BASED ON A DOUBLE-TRACK SYSTEM

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ABSTRACT: *The growing threat of drug abuse among Indonesia's youth highlights the failure of current legal approaches, which still prioritise punishment over rehabilitation. Unlike the U.S. Drug Court model that adopts a double-track system focusing on treatment, Indonesian law treats addicts as criminals, not individuals needing help. This contributes to prison overcapacity and ineffective prevention. The study uses a normative legal research method that uses a normative juridical approach method and is based on the post-positivism paradigm. This approach is needed to discuss the dynamics of normative discourse on the issues being built. The results of this study explain that a reformed system should separate addicts from dealers and promote rehabilitation as a primary response. Adopting a Drug Court model in Indonesia, where qualified users are diverted to supervised treatment from the moment of arrest, could enhance justice, reduce recidivism, and uphold human rights.*

Keywords: Drug Court, Drug Abuse, Double Track System

1. INTRODUCTION

Article 54 of the Narcotics Law has expressly stated that addicts and victims of drug abuse are required to undergo medical rehabilitation and social rehabilitation, and Article 103 paragraph (1) of the Narcotics Law also states in essence that the judge examining the case of a drug addict can decide to order the person concerned to undergo treatment and/or care through rehabilitation. Meanwhile, Article 103 paragraph (2) of the Narcotics Law states that the period of treatment and/or care for drug addicts is calculated as the period of serving the sentence. This shows that the criminal law policy contained in the Narcotics Law is an integral policy using penal and non-penal means by providing healing to both the convict (treatment of offenders) and to the community (treatment of society), so that rehabilitation is a form of forward-looking sanction that improves the perpetrator while protecting the community[1]. About the sanction approach in the Narcotics Law, which contains penal and non-penal means, the spirit of the Narcotics Law is actually to use a double-track system in handling narcotics crimes.

Regarding non-penal means, the Narcotics Law has regulated quite firmly regarding sanctions in the form of rehabilitation, where Article 4 letter d of the Narcotics Law states that the Narcotics Law aims to, among other things, guarantee medical and social rehabilitation efforts for drug abusers and addicts. Then Article 54 and Article 103 paragraph (1) of the Narcotics Law also guarantee that drug addicts are required to undergo rehabilitation. Article 127, paragraph (2) of the Narcotics Law even stipulates that in deciding cases of abuse, judges are required to pay attention to Article 54, Article 55, and Article 103, and Article 127, paragraph (3) of the Narcotics Law also requires victims of drug abuse to undergo rehabilitation. Therefore, with the double track system approach, the Narcotics Law has made imprisonment no longer the main choice for cases of drug abuse, but rather prioritises sanctions through rehabilitation.

However, at the empirical level, the spirit of the Narcotics Law which prioritizes rehabilitation does not seem to be running as expected, because data as of December 2020 shows that there are still 167,607 drug convicts being sentenced in

Indonesian correctional institutions, which is 96% of the total population of special inmates and 45% of the total population of correctional institutions [2]. This figure also shows that drug convicts are the biggest contributors to the problems of correctional institutions in Indonesia, which have never been resolved, namely, overcapacity or overcrowding. Based on data collected from the Correctional Data System at the Directorate General of Corrections of the Republic of Indonesia, the problem of overcapacity in correctional institutions throughout Indonesia is 83%, exceeding existing capacity. [3] Therefore, considering the increasingly concerning condition of drug abuse in Indonesia and the impact on the problem of over capacity of correctional institutions that has never been resolved, it seems that Indonesia needs to try to adopt the Drug Court model or Special Narcotics Court like the one in the United States which has succeeded in combating drug abuse by prioritizing rehabilitation sanctions. This drug court model was born because the United States is very aware that prison sentences only cause recidivism and will worsen drug abuse. For that reason, the concept of a drug court is present as a justice system that handles drug cases. Drug abuse that integrates the assessment and treatment process for drug abusers in case management and the judicial process, the judge imposed rehabilitation with serious supervision for the perpetrator [4]

In the process, in general, suspected drug abusers are directly brought before the drug court by investigators to examine their initial evidence to see whether they meet the qualifications as an abuser or not, and if they do, an assessment will be carried out where the assessment team examining the perpetrator is also directly under the management of the drug court. This allows judges to confidently make decisions in the form of rehabilitation treatment for drug abusers and/or addicts without relying on other stakeholders, and judges can closely monitor the progress of the rehabilitation so that the treatment will also run optimally. Based on experience in America, McSweeney, Turnbull, and Hough have shown evidence that several evaluations of drug courts in America have shown a decrease in recidivism/re-arrest rates and a de-

crease in drug use, so that drug courts are considered successful in combating drug abuse [5].

This concept can be said to be in line with the expected objectives of handling drug abuse as stated in the Narcotics Law, namely by prioritising rehabilitation sanctions and reducing the recidivism rate in drug abuse crimes in Indonesia. Therefore, it is expected that in the future, the latest narcotics law will separate between penal sanctions and depenalization, considering that in the category of drug crimes there are two classifications, namely between drug perpetrators and drug addicts by implementing a double track system, the narcotics law is more objective and targeted in providing punishment between the perpetrator and the victim.

The concept of drug court that will be studied by this author is more humanizing for drug abusers, because this concept has been widely adopted in developed countries, considering the role of drug courts is to implement a double track system, namely being able to cluster the provision of more objective sanctions and separate between penalization and depenalization. In the concept of drug court itself, drug offenders who are proven to be addicts during the examination and have successfully undergone rehabilitation will have their punishment sanctions eliminated. So that it will be more objective in giving punishment to drug offenders and prevent the combination of penalisation and depenalization, which, so far in the narcotics law has not been clear about the concept of punishment. This will have an impact on reducing overcapacity in Correctional Institutions and breaking the chain of drug trafficking.

Therefore, this paper will describe and analyse the existing conditions of handling drug abuse in Indonesia and its effectiveness, whether it has met the desired goals or not. Based on this, it is then analysed regarding the urgency of the need for legal reform based on a double-track system in handling drug abuse by conducting a comparative study of drug abuse handling in the United States, which applies the drug court model. Furthermore, the researcher will try to offer a model drug court based on a double-track system to be implemented in Indonesia, considering its effectiveness in countries that have implemented the concept. However, the implementation drug court model needs to be adjusted so that in its implementation, it will continue to reflect the awareness, sense of justice, and values contained in Pancasila as the source of all sources of law in Indonesia.

2. RESULTS AND DISCUSSION

1) Handling of Drug Abuse Through the Current Criminal Justice System in Indonesia

The criminal justice system in Indonesia, as regulated in various laws and regulations, has the main objective of achieving justice, social order, and recovery for both society and perpetrators of crimes. However, in practice, the achievement of these objectives is often a big question mark. This happens because the criminal justice process often focuses more on punishing without ensuring whether the punishment provides a deterrent effect or recovery for the perpetrator. Drug cases are a clear example of where the criminal justice system often fails to achieve its criminal objectives.

Indonesia adopts a retributive justice-based legal approach in dealing with criminal offences, including drug cases. This is

reflected in the imposition of severe penalties on drug offenders, be they users, dealers, or producers. However, this approach often ignores the need for rehabilitation and social reintegration for perpetrators, especially for drug abusers who need medical and psychosocial assistance more than criminal punishment. As a result, the Indonesian criminal justice system is often trapped in a cycle of punishment without recovery, where perpetrators repeat their actions after serving their sentences.

Criticism of the Indonesian criminal justice system is further strengthened by the fact that the recidivism rate in drug cases remains high, despite the fairly severe sanctions imposed. This shows that the punishment system is unable to provide the expected deterrent effect. In addition, the large number of drug cases piling up in court also reflects the inefficiency of the justice system in handling this problem. On the other hand, the main victims of this system's failure are the community, which continues to face threats from drug trafficking, as well as users, who do not get the help they need to recover. In general, the handling of drug abuse through the current criminal justice system in Indonesia is still oriented towards punishment, not rehabilitation, considering that drug addicts/abusers are still considered criminal offenders who must be given a prison sentence. As for medical rehabilitation and social rehabilitation, their nature is only to reduce the prison sentence, not more oriented towards focusing on healing the perpetrators of drug abuse, which is why the double track system in the current narcotics law does not explicitly separate the actions of addicts and the actions of drug dealers. As for the legal policy in Law Number 35 of 2009 concerning Narcotics itself, it still views addicts as criminals as Article 127 still includes imprisonment, which is why there is ambiguity between one article and another, on the one hand, users are required to undergo medical and social rehabilitation, on the other hand, addicts must be proven and proven first, then they must undergo rehabilitation, so that there is often a debate table debate between the lawmakers themselves in finalizing the imposition of sanctions on drug addicts/users. So the formulation of the narcotics law itself is sissy and confuses law enforcers themselves in carrying out executions. As for the supervision system in the narcotics law itself, there is no comprehensive supervision from the prosecutor's office as the executor.

To understand this reality, the law provides the best solution for drug addicts through existing regulations. One of the objectives of the drug law, in addition to breaking the chain of drug supply and severely punishing dealers, is to provide medical and social rehabilitation for drug addicts so that intensive guidance and care are carried out so that these addicts are no longer dependent on illegal drugs which indirectly cuts off demand for drug dealers (sellers), so that if there is no more demand according to economic law, the dealers will automatically go bankrupt and stop production because there is no more demand from drug addicts.

2) The Importance of Handling Drug Abuse Through a Double-Track System-Based Drug Court Model

Drug trafficking and the number of users have increased from year to year. Of course, this phenomenon makes the Indonesian nation and also the younger generation sad, which will be threatened by the circulation of illegal drugs, therefore,

good law enforcement is not just giving criminal sanctions, but rather providing treatment.

Added to the problem is the overcapacity in correctional institutions in Indonesia. Like many other countries, Indonesia faces a serious problem related to overcapacity in correctional institutions, especially in the context of handling drug abuse cases. Drug abuse is one of the main causes of detention and sentencing in Indonesia. To overcome this problem, the urgency of establishing a drug court is becoming increasingly apparent.

The problem of overcapacity in Indonesian correctional institutions has become a deep and complex issue. Drug abuse, both on a small and large scale, is a major contributor to the growing prison population. This condition creates excessive pressure on correctional institutions, which are unable to accommodate the increasing number of prisoners. The growth in the number of prisoners that is not comparable to the capacity of the correctional institution results in inhumane conditions, a lack of facilities, and a decline in the quality of rehabilitation services. In addition, security issues are also a major focus, because managing a large number of prisoners can lead to tension and the risk of conflict within the correctional institution.

First of all, it is important to understand the dynamics of drug abuse cases in Indonesia. The country faces serious threats related to drug abuse that can damage social structures, public health, and security stability. The increasing number of cases shows the need for a criminal justice system that can respond quickly and effectively.

Currently, the dominant approach tends to be retributive, focusing on punishment as the primary effort without considering the rehabilitation aspect. In many cases, this may not provide an optimal solution, especially when involving drug abusers who may need more attention to recovery than harsh punishment.

Program Director of the Institute for Criminal Justice Reform (ICJR) Erasmus Napitupulu, stated that the guarantee of rehabilitation regulated in the Narcotics Law does not free drug users from the threat of imprisonment. Ironically, prisons and detention centres in Indonesia often experience overcapacity conditions, most of which are filled by drug users. [6].

This shows that the criminal decision or the deprivation of liberty against drug abusers has contributed as a factor causing overcapacity in correctional institutions. Moreover, if we look at the rehabilitation so far, it has not been running effectively, as evidenced by the fact that there are still many recidivists in drug cases who, after leaving rehabilitation, become drug users again, considering that there is no serious coordination and supervision in the implementation of the rehabilitation. where many former drug users fall back into the cycle of drug problems after undergoing rehabilitation. This shows that the existing rehabilitation system has not been running effectively, and innovative steps are needed to increase its success.

As in the table below, some artists have been involved with narcotics many times.

Table: List of Artist Recidivists in Narcotics Cases

No	Artist Name	Year of Stumbling Case	Decision
1	Rio Reifan	2015	14 months in prison
		2017	9 months in prison
		2019	20 months in prison
2	Tio Pakusadewo	2017	9 months of rehabilitation
		2020	2 years in prison
3	Roby Geisha	2013	1 year in prison
		2015	6 months in prison
4	Ammar Zoni	2017	1 year rehabilitation
		2023	10 months in prison
5	Ridho Rhoma	2017	10 months of rehabilitation
		2021	2 years in prison
6	Revaldo	2013	1 year in prison
		2015	6 months in prison

Source: MNC Portal Oke Celebrity.com

The statement that "rehabilitation has not been effective" reflects the worrying conditions in the field. The fact that there are still many recidivists in drug cases indicates that there are weaknesses in the implementation of rehabilitation that must be identified and fixed. Recidivism is a phenomenon in which someone who has undergone rehabilitation or punishment is again involved in similar criminal behaviour. In the context of drug cases, the high rate of recidivism illustrates the failure of the existing rehabilitation system in providing long-term effects for drug addicts.

3) Construction of a drug abuse handling system through a drug court model based on a double-track system

Meanwhile, in the context of handling addicts or drug abusers with imprisonment, the purpose of punishment will not be achieved because the perpetrator is also a victim who will not recover completely if only imprisoned, especially if placed in the same prison cell with other criminals, then there is the potential for more exposure to other negative effects in the future. In other words, the recovery/rehabilitation process in prison will not be optimal and it is difficult to recover completely, which is made worse by socialization between other prisoners which makes it very possible for them to delve into the crime of drug abuse, so it can be said to be a school for criminals to share knowledge of crime.[7].

As a solution to optimise depenalization in the form of rehabilitation for drug abusers, it is reasonable for Indonesia to try to adopt foreign legal institutions in handling drug abusers, such as the Drug Court concept in the United States. This is also based on seeing the phenomenon of globalisation, which makes access to various foreign legal institutions that adhere to the common law legal system possible to adopt or transplant into the civil law legal system, such as Indonesia. This transplantation will indirectly result in tension caused by differences in legal systems. [8].

For this reason, a change or legal renewal is needed for the legal institutions that will be transplanted in Indonesia so that these legal institutions can be applied in the legal system in Indonesia following the values of Pancasila.

According to Esin Orucu, transplantation between legal systems can occur at the level of ideas, concepts and solutions as well as at the level of structures, institutions and methods. [9].

Transplantation of a legal institution can be done by adopting a legal system that has a different legal system, so that there is an adoption of certain legal norms from one country to another during the process of making laws. In this case, the legislature has 2 (two) options in making rules, namely taking over the legal norms or carrying out the process of finding their norms that are considered suitable and under the legal system of the country. [10].

The main concept of Drug Court is to give direct supervision responsibility to the judge who makes the rehabilitation decision. After the rehabilitation decision is made, the judge will be actively involved in monitoring the progress and compliance of the drug addict with the rehabilitation program being undertaken. This idea is based on the principle that direct supervision from the law enforcement concerned can increase the accountability and effectiveness of the rehabilitation process. [11].

The implementation of Drug Court has several advantages that can increase the effectiveness of rehabilitation and reduce recidivism rates: [12].

a. Direct Supervision by Judge:

Drug Court allows judges to be directly involved in the rehabilitation process. This can increase a sense of responsibility and personal awareness for drug addicts, because they know that there are legal consequences if they do not comply with the rehabilitation program.

b. More Intensive Monitoring:

With direct supervision, monitoring of rehabilitation progress can be done more intensively. Judges can ensure that rehabilitation programs are tailored to individual needs and provide the necessary support to prevent recidivism.

c. Fast Decision Making:

If there is a violation or failure in undergoing rehabilitation, the judge can immediately decide on the next steps. This can prevent delays in responding to changes in the condition of drug addicts.

d. Inclusion of Related Parties:

Drug Court involves various parties such as rehabilitation officers, counsellors, and medical personnel, thus providing a holistic approach in handling drug cases. The involvement of all related parties can ensure that addicts receive full support for their recovery.

In addition, the drug court uses the adoption of a double track system that separates between minor and serious cases, which offers flexibility in handling each case individually. Cases involving the use of narcotics for personal purposes may be better handled through rehabilitation, while major cases involving distribution and production can be given heavier sentences. This provides more contextual justice and is based on the severity of the crime.

Drug courts offer a different rehabilitative approach from the conventional criminal justice system. With a focus on rehabilitation and recovery, drug courts can be a solution to deal with drug abuse cases more humanely. It provides an opportunity for perpetrators to get professional help, understand the root of their problems, and work towards recovery. Drug

courts can resolve cases more quickly and efficiently than the conventional criminal justice system. A faster trial process can reduce the burden on correctional facilities, prevent case backlogs, and relieve pressure on prison capacity. [13].

Drug court also promotes a preventive approach. By focusing on rehabilitation, drug courts can help prevent relapse to drug abuse behaviour and reduce the likelihood of re-offending in the criminal justice system. This can break the cycle of drug abuse and re-incarceration. The establishment of drug courts can reduce the burden on correctional facilities by filtering drug abuse cases into a special pathway. This allows correctional resources to be used more effectively for inmates with more serious cases or those who are potentially harmful to society. [14].

The construction of a drug court model based on a double track system that is appropriate for drug abuse crimes in the implementation of the drug court system in Indonesia can provide several benefits in dealing with the problems of drug addicts. However, it should be noted that the Indonesian legal and cultural context may require certain adjustments. The following is the construction of the model if the drug court is implemented in Indonesia:

1. Investigation Stage

The process begins when a person is arrested on suspicion of a drug offence. An investigation is conducted to gather sufficient evidence related to the case. Investigators conduct a preliminary investigation to gather sufficient evidence and information to determine whether there is sufficient basis to charge a suspect. If there is sufficient evidence, investigators can charge a person as a suspect. If the suspect meets the qualifications for the drug court program, that is:

- Caught with evidence of 1 (one) day's use;
- Not a repeat of drug crimes (recidivism);
- Urine test results were positive for narcotics.

So, within 3 (three) days from when the examination report was completed, Drug abuse suspects are immediately brought by investigators to the Special Narcotics Court (drug court) along with witnesses and evidence for further examination to determine whether they meet the qualifications for the drug court program;

2. Participant Commitments and Conditional Recognition Agreement:

Accepted participants must agree to participate in a rehabilitation program and be subject to strict monitoring. Conditional plea agreements may involve conditional admissions from participants regarding their criminal conduct. Drug offenders are given the option to participate in a rehabilitation program rather than face criminal penalties. Offenders must accept this offer voluntarily and agree to follow all rehabilitation procedures, with the suspect admitting to all of their actions.

3. Drug Court Trial Stages:

The trial process in Drug Court is similar to a misdemeanour trial with some specific modifications. The alleged drug offender is brought before a judge in a more informal and rehabilitation-focused trial. Initial evidence showing the offender's involvement in drug abuse becomes the basis for consideration in the judge's decision-making.

The perpetrators suspected of being involved in drug abuse are brought to the Drug Court after the arrest process by the

authorities. They then undergo the initial trial process before a Drug Court judge.

The Chief Justice then appoints a single judge to lead the drug court trial. In front of the drug court judge, evidence in the form of witness statements, suspect statements, and evidence found will be examined to see whether they meet the qualifications as a drug abuser or not. If the judge considers the suspect to be a drug abuser, the judge at the drug court will order the suspect to follow a drug abuse program. assessment by the Integrated Assessment Team involving BNN and other experts.

4. Continuation of Trial in Drug Court

4.1. Submission of Preliminary Evidence Just like in a misdemeanour trial, the presentation of initial evidence is done before a judge. This evidence includes drug test results, witness statements, or other evidence that shows the perpetrator's involvement in drug abuse.

4.2. Judge's Consideration

The Drug Court Judge considers the evidence presented as well as other factors related to the offender's condition and background. These considerations include history of addiction, social support, and likelihood of success in a rehabilitation program. After the suspect has been assessed, the suspect is brought back to drug court, where the judge at the drug court will review and approve a rehabilitation plan developed by the assessment team through the Determination product. The suspect then undergoes a program that has been determined by the drug court.

5. Intensive Rehabilitation, Treatment and Monitoring Program:

5.1 Determination of Rehabilitation Program

After considering the evidence and related factors, the Drug Court judge determines an appropriate rehabilitation program for each offender. This program may include various types of interventions such as counselling, drug monitoring, or participation in a community recovery program.

5.2 Monitoring and Supervision

The supervising judge in charge of the case monitors the offender's progress in the rehabilitation program. They work closely with the rehabilitation team to ensure that the offender is complying with all program requirements and is receiving the support needed during the recovery process.

Offenders accepted into Drug Court will undergo a rigorous rehabilitation program. Drug court participants are directed to follow a rehabilitation program that involves counselling, therapy, and mental health support. Treatment and rehabilitation are tailored to the needs of the individual. This process involves ongoing monitoring by a multidisciplinary team, including mental health and addiction professionals. The program includes intensive monitoring, regular drug testing, and the provision of sanctions or incentives according to the participant's behaviour. Intensive monitoring in this case is also carried out directly by the drug court judge, who determines the rehabilitation program to ensure that the program is optimally carried out by the suspect.

6. Collaboration with External Rehabilitation Institutions

Drug Court collaborates with external rehabilitation institutions such as drug addiction hospitals, rehabilitation centres, and medical experts to provide services that are tailored to the needs of the perpetrators. This collaboration allows the perpetrators to receive holistic and sustainable care.

7. Mental Health Development Stage

7.1 Rebuilding Independence

One of the primary goals of the Drug Court rehabilitation program is to help offenders rebuild their independence. Through a variety of activities and interventions, offenders are encouraged to develop the skills and strategies necessary to overcome the temptations of drug abuse.

7.2 Social and Family Support

Drug Court places special emphasis on social and family support for offenders. Through family counselling and support programs, efforts are made to strengthen positive social relationships and build stable support networks for offenders during the recovery process.

7.3 Prevention of Relapse

Relapse prevention is a major focus of the Drug Court recovery program. Offenders are equipped with the skills and knowledge necessary to identify and address triggers and develop effective problem-solving strategies to prevent relapse.

If a participant has mental health issues, drug courts can provide access to specialised mental health services and support. The participant's recovery and improved mental health are the primary focus.

8. Program Evaluation and Termination:

Participants are evaluated periodically to determine their progress and continued participation. The program ends after participants complete the rehabilitation and recovery phase. If the suspect completes the rehabilitation program set by the drug court, the prison sentence can be set aside, and the case can be closed. If, based on monitoring, the suspect cannot complete the rehabilitation program, the suspect will be processed conventionally, namely investigation, prosecution, until trial and sentencing.

9. Recovery and Empowerment:

Participants who complete the drug court program are expected to achieve sustainable recovery and regain control over their lives.

Drug courts in the United States have been proven effective in reducing the recurrence rate of drug crimes and improving the recovery outcomes of participants. This approach reflects a paradigm shift from punishment to rehabilitation, with a focus on holistic treatment and support. Therefore, the adoption of drug courts in Indonesia is urgently needed so that sanctions for drug addicts are right on target, and also to create harmony in managing the one-gate, one-system criminal justice system. In this case, the court is the deciding factor in providing a decision for the imposition of a just criminal sentence on drug addicts.

3. CONCLUSION

Based on the writing above, the author then formulated several conclusions that can be drawn, including:

Key Findings:

- The current application of the Narcotics Law in Indonesia remains punitive, prioritising imprisonment over rehabilitation, due to the lack of firm implementation of the double-track system and the ambiguous legal status of assessments and rehabilitation.
- Drug addicts/abusers are often treated the same as dealers, without clear legal separation, and rehabilitation is rarely imposed due to the absence of mandatory assessment procedures.
- The rise in drug circulation and abuse, prison overcapacity, and recurring relapses (recidivism) among drug users point to systemic inefficiencies in current drug law enforcement.
- A Drug Court model based on a double-track system provides a more structured approach, ensuring mandatory assessment, access to supervised rehabilitation, and separation between addicts and dealers.

Implications:

- Implementing a Drug Court with a double-track system could lead to more humane and effective drug law enforcement, aligning with human rights standards by prioritising recovery over punishment.
- This approach can reduce prison overcrowding and disrupt the cycle of drug-related recidivism by addressing the root causes of addiction through mandatory rehabilitation.
- By legally integrating assessment and rehabilitation from the investigation stage, courts can tailor sanctions more accurately and justly, based on the individual's role and condition.

Limitations & Recommendations:

Based on the results of this study, it is suggested that Indonesia needs to adopt the concept of Drug Court or Special Narcotics Court, like the one in the United States, which has succeeded in combating drug abuse to further optimize rehabilitation measures for drug abusers in Indonesia. The transplantation of the drug court concept needs to be done with adjustments so that, in its implementation, it will still reflect the awareness, sense of justice, and values contained in Pancasila as the source of all sources of law.

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