

The Authority of the Republic of Indonesia Police in Determining the Rehabilitation of Narcotics Abusers According to Law Number 35 of 2009 Concerning Narcotics

Marahalim Harahap

Student of Magister Ilmu Hukum Sekolah Tinggi Ilmu Hukum Sultan Adam Banjarmasin, Indonesia

email: mara.halim.harahap66@gmail.com

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ABSTRACT

Drug crime is a covert activity that occurs in an organized manner, with a disconnected network. In the simplest cases, at least users and dealers are involved, while at higher levels, there are dealers, financiers, and even crime group leaders. If this problem is not addressed promptly and thoroughly, it is certain that many members of our society, especially the younger generation, will become entangled in the problem of drug abuse and illicit trafficking, potentially leading to a "Lost Generation" that could undermine the nation's progress in the future. The research method used in this study uses a normative research method. The type of research used in this study is normative legal research, namely document studies, which use legal sources in the form of laws and regulations, contracts/agreements/contracts, legal theories, and the opinions of legal experts. Referring to this regulation, the decision on rehabilitation rests with the judge who decides a case, as Article 103 (2) of Law Number 35 of 2009 concerning Narcotics states: (2) The period of incarceration and/or treatment for narcotics addicts as referred to in paragraph (1) letter a is calculated as the period served by the sentence. This means that the rehabilitation period undertaken by drug addicts or abusers must be counted as part of their sentence, and therefore, the decision regarding rehabilitation rests entirely with the judge.

INTRODUCTION

The current phenomenon is that the intensive enforcement efforts carried out by the Indonesian National Police (POLRI) have not been able to halt the illicit trafficking of narcotics in the market because narcotics crimes are always carried out within an organized criminal system, often involving large-scale international criminal networks. Furthermore, sanctions and various legal consequences for narcotics perpetrators and dealers are not a threat due to the substantial profits from illicit drug trafficking. This situation is counterproductive in combating illicit drug trafficking, as legal consequences fail to deter perpetrators.¹

From a social perspective, drug trafficking is clearly detrimental to the nation. Many young people have been destroyed by falling into the vicious cycle of drug abuse. If the younger generation is destroyed, the nation will experience mental decline and, over time, collapse. Therefore, swift and specific action is needed to curb the spread of drug trafficking.²

If this problem is not addressed promptly and thoroughly, it is certain that many members of our society, especially the younger generation, will become entangled in the problem of drug abuse and illicit trafficking, potentially leading to a "Lost Generation" that could undermine the nation's progress in the future.³

Indonesia is no longer a transit country for international drug trafficking, but has become a target country and even a producer of narcotics, with the discovery of several illegal drug production laboratories in several locations across Indonesia, such as Tangerang, Banten, and most recently in Batam and Penjarangan, North Jakarta. Drug abuse and illicit trafficking are currently a very concerning problem and are on the rise.⁴

There is an unbreakable chain of relationships between drug dealers and users. The more drug users there are, the more extensive the drug distribution network becomes. Therefore, a process is needed to break the chain of drug distribution from upstream to downstream, from dealers to users. Eradicating narcotics solely by targeting dealers would be futile, as the relationship between dealers and users is inseparable, a symbiotic mutualism that must be broken to suppress drug trafficking and abuse, particularly in South Kalimantan.⁵

The eradication of narcotics by the Indonesian National Police (POLRI) is currently under public scrutiny. The face of law enforcement carried out by the POLRI is undergoing a very tough test. The POLRI carries two distinct duties, making law enforcement challenging. In addition to enforcing the law, the POLRI is also required to maintain social order in society, yet these two duties have different aspects. Sometimes the principles of law enforcement conflict

¹ Machita Mariane Ohoiwutun Noenik Soekorini, "PENEGAKAN HUKUM PIDANA PENYALAHGUAAN NARKOTIKA SEBAGAI PELAKU PENGEDAR," n.d., 173–83.

² Bayu Piji Hariyanto, "Pencegahan Dan Pemberrantasan Peredaran Narkoba Di Indonesia" 1, no. 1 (2018): 201–10.

³ Agustian Burda and Asran Jalal, "International Journal of Social Science And Human Research Policy Analysis for Prevention of the Danger of Drugs Abuse for Young Generation" 06, no. 05 (2023): 2679–91, <https://doi.org/10.47191/ijsshr/v6-i5-21>.

⁴ Suhartini, E., Roestamy, M., & Yumarni, A. *Op. Cit*

⁵ Muhammad Yunus Idy and Handar Subhandi Bakhtiar, "Legal Policy in the Prevention of Narcotics in Indonesia" 15, no. 4 (2021): 1389–94.

with the principles of maintaining public order.⁶

Fiat justisia ruat coelum, a Latin proverb, means "though the heavens fall, justice must be upheld." This is the face of current law enforcement. In practice, this adage seems to be implemented within a narrow framework under the pretext of legal enforcement and certainty. The legal framework for criminal procedure and sentencing in Indonesia regulates the formal procedures that must be followed in resolving a criminal case. However, unfortunately, in practice, this formal system is often used as a repressive tool by those disguised as law enforcement officials.⁷

What is the ultimate goal of sentencing. Is it to create a deterrent effect? Is it to create order and security? Is it to uphold the rule of law? Many answers have been offered, but what is certain is that the measure of a sentencing system's success lies not in the number of prisoners or convicts in detention centers and correctional institutions, but rather in the absence or reduction of crime in society.⁸

The current penal system no longer seems to deter criminals. Overcrowding in detention centers and prisons has led to a surge in crime within them. Weak oversight disproportionate to the number of inmates. Prisons no longer seem to be the ideal place to reintegrate inmates into society; instead, their function has shifted to being a crime academy, a place where inmates are honed in their criminal activities.⁹

The problem of selecting various alternatives to achieve the best, most appropriate, most deserving, most successful, or most effective punishment is a complex one. From a criminal policy perspective, the uncontrolled growth of crime can actually be caused by the inappropriateness of the type of criminal sanctions chosen and imposed. The status of victims in drug crimes falls into the category of mutual victimization according to Sellin and Wolfgang, or self-victimizing victims according to Stephen Schafer. Normatively, the perpetrator of the crime is the perpetrator, as it fulfills the elements of a crime. However, from a victimological perspective, the perpetrator of the crime is mutual victimization or self-victimizing victims. The perpetrator is unaware that they are the victim of their own crime; the victim fully participates in the crime because they are the perpetrator.¹⁰

Law Number 35 of 2009 concerning Narcotics actually regulates rehabilitation efforts.¹¹ This is stated in Article 127 of Law Number 35 of 2009 concerning narcotics, which

⁶ Amalia Syauket Edi Saputra Hasibuan, "Efforts to Eradicate Narcotics in The National Police : A Case Study of Teddy Minahasa" 03, no. 04 (2023): 900–905.

⁷ Abdul Ghoni and Joko Setiyono, "International Journal of Social Science and Human Research Indonesian Criminal Justice System and Human Rights Protection" 07, no. 07 (2024): 5644–47, <https://doi.org/10.47191/ijsshr/v7-i07-116>.

⁸ Diah Pudjiastuti et al., "Alternatives to Imprisonment as an Effort to Overcome Overcrowding in Correctional Institutions" 9, no. 1 (2025): 39–53, <https://doi.org/10.25072/jwy.v9i1.4275.Abstract>.

⁹ Sadiq Ewaoda Amali, Ephraim Kevin Sibanyoni, and Thompo Tshivhase, "Incarceration for Reformation or Deformation?," 2021, 562–71.

¹⁰ Toni Kasmiri, I Nyoman Nurjaya, and Priya Djatmika, "Restorative Justice Approach To Victimless Crime" 3, no. 4 (2024): 1943–50.

¹¹ Aria Suntoro, "PELAKSANAAN REHABILITASI PECANDU NARKOTIKA BERDASARKAN UNDANG-UNDANG NOMOR 35 TAHUN 2009 TENTANG NARKOTIKA Aria Suntoro ABSTRAK," 2009, 25–45.

states:

(1) Every abuser of:

- a. Class I narcotics for personal use shall be punished with a maximum imprisonment of 4 (four) years.
- b. Class II narcotics for personal use shall be punished with a maximum imprisonment of 2 (three) years.
- c. Class III narcotics for personal use shall be punished with a maximum imprisonment of 1 (four) years.

(2) In deciding a case as referred to in paragraph (1), the judge must pay attention to the provisions referred to in Article 54, Article 55, and Article 103.

(3) If the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser must undergo medical and social rehabilitation.

Drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. Article 103 of Law Number 35 of 2009 states:

(1) Judges examining cases involving drug addicts may:

- a. Decide to order the individual to undergo treatment and/or rehabilitation if the drug addict is proven guilty of committing a drug crime; or
- b. Decide to order the individual to undergo incarceration and/or rehabilitation if the drug addict is not proven guilty of committing a drug crime.

(2) The period of incarceration and/or treatment for drug addicts as referred to in paragraph

(1) letter a shall be counted as part of the sentence.

The phrase "can" in Article 103 of Law Number 35 of 2009 concerning narcotics makes the placement of drug addicts and abusers in rehabilitation institutions unnecessary. This is because Article 127 of Law Number 35 of 2009 concerning narcotics does not explicitly stipulate rehabilitation efforts for drug addicts and abusers. Article 127, in fact, imposes the threat of imprisonment for drug addicts and abusers. This has led to suboptimal rehabilitation efforts for drug addicts. On the other hand, drug crimes are increasing daily, and the increasing number of drug addicts has also led to increased drug trafficking. Criminalization of drug addicts and abusers has not been able to halt or slow the rate of drug trafficking in Indonesia. Based on the background description above, the important point that will be discussed in this research is the Authority to Determine Rehabilitation for Narcotics Abusers by Investigators of the Republic of Indonesia National Police Based on Law Number 35 of 2009 concerning Narcotics.

METHOD

The research method used in this study uses a normative research method. The type of research used in this study is normative legal research, namely document studies, which use legal sources in the form of laws and regulations, contracts/agreements/contracts, legal theories, and the opinions of legal experts.¹² This research uses a statute approach to determine whether there is a legal vacuum, ambiguity, or conflict of norms within the incident under study. The collection of legal materials conducted in this research is through a literature study

¹² Bambang Waluyo, 1996. *Penelitian Hukum Dalam Praktek*, Jakarta: Sinar Grafika;

to obtain primary and secondary legal materials in the form of laws and regulations, books, articles and journals related to the research object. After the legal materials are collected, they are then processed and analyzed by compiling and analyzing them qualitatively. Then, the data is described descriptively to obtain a clear and understandable picture to answer the research problem.¹³

RESULT AND DISCUSSION

Law Number 35 of 2009 concerning Narcotics actually regulates rehabilitation efforts, as outlined in Article 127 of Law Number 35 of 2009 concerning narcotics, which states¹⁴:

(1) Every abuser of:

a. Class I narcotics for personal use shall be punished with a maximum imprisonment of 4 (four) years. b. Class II narcotics for personal use shall be punished with a maximum imprisonment of 2 (three) years. c. Class III narcotics for personal use shall be punished with a maximum imprisonment of 1 (four) years.

(2) In deciding cases as referred to in paragraph (1), the judge must consider the provisions referred to in Articles 54, 55 and 103.

If the abuser as referred to in paragraph (1) can be proven or proven to be a victim of narcotics abuse, the abuser is obliged to undergo medical rehabilitation and social rehabilitation.

Article 54 of Law Number 35 of 2009 states:

Drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation.

Article 103 of Law Number 35 of 2009 states:

(1) Judges examining cases involving drug addicts may:

a. Decide to order the individual to undergo treatment and/or rehabilitation if the drug addict is proven guilty of committing a drug crime;

or

b. Decide to order the individual to undergo treatment and/or rehabilitation if the drug addict is not proven guilty of committing a drug crime.

(2) The period of incarceration and/or treatment for narcotics addicts as referred to in paragraph (1) letter a is calculated as the period of serving the sentence.

The phrase "can" in Article 103 of Law Number 35 of 2009 concerning narcotics makes the placement of drug addicts and abusers in rehabilitation institutions not mandatory, because the provisions of Article 127 of Law Number 35 of 2009 concerning narcotics do not expressly provide a decision regarding rehabilitation efforts for addicts and drug abusers. Article 127, as mentioned above, actually threatens prison sentences for drug addicts and abusers. This is what has led to the rehabilitation efforts initiated by the National Narcotics Agency being suboptimal. On the other hand, drug crimes are increasing day by day, and the increasing number of drug addicts has also led to increased drug trafficking. Criminalizing drug addicts and abusers has not been able to halt or slow the rate of drug trafficking in Indonesia. Therefore, the National Narcotics Agency (BNN) initiated this joint regulation with the aim of reducing the number of drug addicts and abusers and suppressing and reducing the rate of drug trafficking in Indonesia.

In principle, drug addicts and victims of drug abuse are sick individuals who must

¹³ Sarifuddin Azwar. 1998. *Metode Penelitian*. Yogyakarta: Pustaka Pelajar;

¹⁴ Purwanto, R., Santiago, F., & Sitepu, A. *Op. Cit.*

undergo treatment through placement in medical and/or social rehabilitation institutions. This consideration is based on the fact that the majority of prisoners and detainees in drug-related crimes fall into the category of drug abusers and are themselves sick individuals. Therefore, criminalizing drug abusers without considering their illness is inappropriate, as it ignores the importance of care and treatment.¹⁵

The state's responsibility is to protect its citizens from narcotics, therefore efforts have been made to suppress the rate of drug circulation, rehabilitation efforts are one strategy to break the chain of drug circulation, and it is through these joint regulations that efforts are made.¹⁶

The state's responsibility is to protect its citizens from narcotics. Therefore, efforts have been made to suppress drug trafficking. Rehabilitation efforts are one strategy to break the chain of drug trafficking, and this joint regulation is being attempted to break this chain. These factors underlie the government's issuance of a joint regulation involving the Chief Justice of the Republic of Indonesia, the Minister of Law and Human Rights of the Republic of Indonesia, the Minister of Health of the Republic of Indonesia, the Minister of Social Affairs of the Republic of Indonesia, the Attorney General of the Republic of Indonesia, the Chief of the Indonesian National Police, and the Head of the National Narcotics Agency of the Republic of Indonesia, with the aim of breaking the chain of drug trafficking in Indonesia.¹⁷

The pattern of overcoming drug abuse and illicit trafficking cannot only be done through repressive efforts by law enforcement officers, because in principle the circulation of narcotics is very dependent on the existing market, meaning that supply is related to demand. The old narcotics laws (the 1976 narcotics law and the 1997 narcotics law) have not paid attention to rehabilitation efforts for drug abusers, because the criminal law policy at that time was still in the context of how to eradicate drugs through efforts in the form of repressive actions.¹⁸

Rehabilitation, carried out under the joint regulations mentioned above, can be carried out by investigators during the investigation process, prosecutors during the prosecution process, and the judiciary during the trial process. The existence of equal authority in each agency creates uncertainty in the state's handling of rehabilitation.¹⁹

The authority at every stage of investigation, prosecution, and trial to provide rehabilitation to addicts caught in drug crimes creates uncertainty in the provision of rehabilitation for drug addicts.

¹⁵ Ahmad Fauzi, M Noor Fajar, and Al Arif, "ProBono and Community Service Journal" 1, no. 2 (2022): 39–46.

¹⁶ Andri Winjaya Laksana, Hendro Widodo, and Moh Aris Siswanto, "Criticism of Legal Protection for Victims of Drug Abuse : The Disharmony in Legal Substance Regulation" 33, no. 1 (2025): 93–109.

¹⁷ *Ibid*

¹⁸ *Ibid*

¹⁹ Suyanto, S., Bawono, BT, & Wahyuningsih, SE (2025). Rekonstruksi Regulasi Perkara Penyalahgunaan Narkotika Menggunakan Pendekatan Restoratif sebagai Implementasi Asas Dominus Litis Kejaksaan. *Jurnal yang Dihapus* . <https://doi.org/10.57185/jlarg.v3i9.135>

Recovery from addiction requires several stages, one of which is detoxification. During this process, an addict is taught to abstain from drug use or to reduce their usual dosage until they are completely eliminated. This stage can be very dangerous and painful for the addict, therefore, it is best to be assisted by a medical professional. In addition to addressing physical issues, rehabilitation also helps addicts emotionally. Addicts generally experience emotional problems due to their dependence on drugs. In some cases, emotional issues are the primary cause of drug use. Therefore, rehabilitation helps an addict manage their emotions, as they are typically supervised by a psychologist/counselor during the recovery process. Emotional stability also helps prevent relapse, or the return of an addict to drug use after the rehabilitation process is complete.

The three stages of drug rehabilitation are²⁰:

1. Medical rehabilitation (detoxification), which is the process by which drug addicts reduce withdrawal symptoms (withdrawal) through the supervision and monitoring of doctors in a hospital.
2. Non-medical rehabilitation, which involves various rehabilitation programs, for example, therapeutic communities (TC) programs, religious approaches, or moral and social support. The TC program has four components: behavioral development, emotional and psychological management, mental and spiritual development, job skills, and survival.
3. Continuing guidance, which involves providing activities tailored to interests and talents.

Addicts who successfully complete this stage can return to society, either by attending school or returning to work. The goals of rehabilitation for addicts are²¹:

1. To change behavior toward positive and healthy living.
2. To improve emotional control and avoid legal problems.
3. To live more productively and be able to fulfill their social functions.
4. To achieve complete abstinence from drug addiction.

Drug rehabilitation also aims to restore self-confidence and eliminate addiction for drug addicts, restore patients' self-esteem and return to activities without medical aids, and enable drug abuse victims to regain their social responsibilities.²² In general, the benefits of rehabilitation for drug addicts and victims of drug abuse are:

1. Saving lives.
2. Living a more positive life.
3. Clean and sober.
4. Long-term recovery.
5. Better health.

According to Article 54 of Law Number 35 of 2009 concerning Narcotics (the Narcotics Law), drug addicts and victims of drug abuse are required to undergo medical and social rehabilitation. To implement this article, the government provides services and access to rehabilitation services for drug addicts, abusers, and victims of drug abuse who require

²⁰ *Metode Penilaian Kuantitatif untuk Tingkat Keparahan Ketergantungan Narkoba dan Program Rehabilitasi yang Sesuai*. (2023). <https://doi.org/10.5772/intechopen.105582>

²¹ Glasner, S. (2024). Apa Saja Tujuan Perawatan Kecanduan? *Kecanduan*. <https://doi.org/10.1093/wentk/9780190946555.003.0010>

²² Siti Nur Fatimah Ramli Fitriani Aprilia, Siti Yuli Harni, "Medical and Social Rehabilitation Of Patients With Narcotics Abuse" 1, no. 2 (2023): 80–85.

rehabilitation. These rehabilitation services and access include rehabilitation centers, rehabilitation centers, rehabilitation homes, and mandatory reporting institutions (IPWL). In addition to government-provided services, rehabilitation services are also provided by the community through community-based interventions (CBI).

There are at least three policies that can be implemented to improve rehabilitation outcomes.

First, improving the capacity of rehabilitation institutions by enhancing the institutional capacity, resources, and infrastructure of rehabilitation centers/workshops and IPWL. Optimizing existing rehabilitation services can also be done to support increased capacity for rehabilitation services, both inpatient and outpatient facilities. Furthermore, community participation through the Community-Based Involvement Program (IBM) is a crucial pillar in improving rehabilitation services to reach drug abusers who have limited access to rehabilitation due to geographic and financial constraints.

Second, optimize the role of the Drug Abuse Task Force (TAT), which consists of the Ministry of Health, the National Police (Polri), the National Narcotics Agency (BNN), the Prosecutor's Office, and the Ministry of Law and Human Rights, and implement restorative justice for drug addicts, abusers, and victims of drug abuse, as well as maximize the application of rehabilitation rather than criminalization. Competency building for the parties involved in the TAT can be implemented to improve their understanding and performance.

Third, strengthen laws and regulations to support the achievement of the target of rehabilitating 100,000 drug abusers annually, as directed by the President in 2015. These laws and regulations include laws, government regulations (PP), presidential regulations (Perpres), and ministerial regulations (Permen) that provide stronger institutional arrangements, personnel, and budget support.²³ The importance of rehabilitation in terms of social and medical aspects from a human rights perspective is the right to be free from the threat of drug dangers, which is recognized at the level of effectiveness in preventing addicts from abusing drugs again.

Defendants undergoing medical or social rehabilitation must meet several requirements: test positive for narcotics, receive a recommendation from an integrated assessment team, not act as a dealer, distributor, courier, or producer, not be a repeat drug offender, and be caught red-handed without evidence or with evidence that does not exceed a certain amount.

Imprisonment for drug users has a negative side because it constitutes a deprivation of liberty, thus preventing the goal of punishment from being fully realized. Rehabilitation is intended to help drug users categorized as addicts free themselves from their dependency and receive guidance during rehabilitation. Often, drug abusers worsen due to judge's decisions, which ultimately provide no benefit.

Rehabilitation options available to drug abusers include medical and social rehabilitation. Medical rehabilitation is carried out in hospitals designated by the Minister of

²³ dkk Ondy asep Saputra, "Evaluasi Kebijakan Penanggulangan Narkoba Di Indonesia" 8, no. 3 (2025): 1455–66.

Health, while social rehabilitation is carried out in social rehabilitation facilities designated by the Minister of Social Affairs.

Social rehabilitation is the process of reintroducing drug addicts to their normal lives to prevent them from repeating their actions. This aims to reintegrate drug addicts and/or abusers into society by restoring their thought processes, emotions, and behaviors as indicators of change, enabling them to fulfill the components of a normal personality and re-engage with their social environment.²⁴ The importance of rehabilitation for drug addicts and abusers requires investigators handling drug crimes to truly coordinate, communicate, and collaborate with competent parties such as the National Narcotics Agency (BNN) or other rehabilitation institutions.

The implementation of Police Regulation Number 8 of 2021 should provide a unified regulatory framework that prosecutors and judges can apply when deciding drug crimes. The implementation of rehabilitation should not be limited to restorative justice regulations; rather, its implementation should be mandatory within the Indonesian criminal justice system. In terms of authority, the determination of rehabilitation for drug offenders should not be regulated solely by a police-level regulation, because such a regulation would only bind investigators from the Indonesian National Police. Regulations regarding mandatory rehabilitation must be formulated globally in the form of a statutory regulation, thus binding all components of the Indonesian criminal justice system. If these regulations are consistent, there will be uniformity in fulfilling rehabilitation requirements for drug offenders.

The fragmented regulations on rehabilitation will tend to create sectoral bias in the law enforcement process. If each agency creates its own regulations for implementing rehabilitation, duplication of regulations will arise, potentially leading to inconsistencies in the handling of drug eradication efforts in Indonesia. Therefore, a unified regulation is needed that accommodates all interests in the law enforcement process, starting from the investigation stage.

If a person is suspected of being an addict or drug abuser during the investigation process, rehabilitation efforts should have been implemented during the investigation. The rehabilitation mechanism must be based on a joint decision between the investigator and the prosecutor, and with the permission of the judge as the final decision maker. Handling rehabilitation from the beginning of the investigation will better foster a sense of restorative justice in handling drug crimes. A unified regulation will ensure legal certainty in fulfilling the rehabilitation rights of drug abuse victims.

Conclusion

Rehabilitation provisions in the investigation process are regulated by Police Regulation Number 8 of 2021 concerning the Handling of Criminal Offenses based on Restorative Justice. This regulation governs the rights and authority of investigators to decide whether a case can be subject to restorative justice. The investigator determines whether or not someone is eligible for rehabilitation through this regulation. Therefore, the investigator's objective assessment of whether or not someone is eligible for rehabilitation depends on the investigator's assessment of a person as a drug abuser or addict. If, according to the

²⁴ Aprilia et al., *Op. Cit*

investigator's objective assessment, a person does not require rehabilitation, the prosecutor will proceed with the prosecution process, where the prosecutor will further assess the individual's suitability for rehabilitation. This demonstrates that the authority to propose rehabilitation remains fragmented within the regulations applicable to each law enforcement agency. The investigator's determination of rehabilitation implementation, based on Police Regulation No. 8 of 2021 concerning the Handling of Criminal Offenses Based on Restorative Justice, is in conflict with Law No. 35 of 2009. This law stipulates that a drug offender's eligibility for rehabilitation depends on a judge's decision. A rehabilitation decision constitutes a sanction and is counted as part of the sentence. Rehabilitation implemented by the National Police could halt the investigation process. The fragmented regulations regarding the implementation of rehabilitation can create legal uncertainty.

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