

***The Problematic of Dual Positions of Active Military
Members In Occupying Civilian Positions***

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Abstract

The main duties of the TNI have been regulated in Article 7 paragraph 1 of Law Number 34 of 2004 concerning the Indonesian National Army. However, currently many active TNI members are found not only serving in their units but also actively involved in civil government positions which are suspected of being contrary to applicable laws and regulations. The problems in this study are how is the legality of Active TNI members who occupy civilian positions based on Law Number 34 of 2004 concerning the Indonesian National Army, and how are the problematic of dual positions of Active TNI members who occupy civilian positions. This research is a normative legal research. The results of the study show that the legality of active TNI members in occupying civilian positions has been regulated in Law Number 34 of 2004 concerning the Indonesian National Army and the Draft Law on Amendments to Law Number 34 of 2004 concerning the Indonesian National Army in 2025. The appointment of active TNI soldiers to civilian positions does not have to be a problem as long as it does not violate the provisions of applicable laws and regulations. This will certainly fulfill the principle of justice where the TNI has an important role in the process of independence of this country so that it is very appropriate to be given space to participate in determining the direction of national development. In addition, the TNI also has many superior human resources and can be utilized according to their competencies.

Keywords: *dual positions, Active TNI, civilian positions*

A. INTRODUCTION

1. Background

Maintaining the defense and security of the country is the obligation of all citizens, in accordance with the spirit reflected in the fourth part of the Preamble to the Constitution of the Republic of Indonesia of 1945. It emphasizes the importance of establishing a government that protects all people, maintains public order, and supports world peace. For this reason, a military institution was formed, namely the Indonesian National Army (TNI). The TNI is the main element in maintaining the sovereignty of the State which joins hands

with the people as a supporting element in maintaining the unity of the State so that it remains intact.

Over time, Indonesia's military power does not only run in the defense and security sectors of the country. The ABRI in the new order era, not only tasked with maintaining sovereignty but also participating in state politics. The existence of these other functions occurred since the TNI structured and played a role during the period of state development (the Old Order of 1945-1966 to the New Order of 1966-1998) and the struggle of the state during the transition of power. The dominance of military power in politics is marked by a *silent coup d'etat*, which is a silent or soft power struggle that is increasingly felt (Sulaiman, & Nasir, 2023; 3).

The TNI was born with the main task contained in article 7 paragraph 1 of Law Number 34 of 2004 concerning the Indonesian National Army that the main task of the TNI is to uphold the sovereignty of the State, maintain the integrity of the territory of the Unitary State of the Republic of Indonesia based on Pancasila and the Constitution of the Republic of Indonesia in 1945, as well as protect the entire nation and disturb the integrity of the nation and State.

Although in reality, the phenomenon of active TNI soldiers who serve not only in their units but also in other agencies has been found. Meanwhile, Article 47 paragraph (1) of Law Number 34 of 2004 concerning the Indonesian National Army, expressly explains that "Soldiers can only occupy civilian positions after resigning or retiring from active military service". Although there is an exception in article 47 paragraph 2 that "Active soldiers can occupy positions in the office in charge of the coordinator for Politics and State, State Defense, Presidential Military Secretary, State Intelligence, State Cipher, National Defense Agency, National Defense Council, National *Search and Rescue* (SAR), National Narcotics, and the Supreme Court.". However, it is still found that there are active TNI soldiers who occupy positions outside the agencies and institutions that have been regulated in paragraph 2, for example in the State-Owned Enterprises (SOEs) sector, so that they become dual positions.

Recently, controversy has arisen regarding the involvement of Active TNI members in civilian government positions such as the appointment of Major Teddy Indra Wijaya as Cabinet Secretary or Cabinet Secretary by President Prabowo Subiyanto. The appointment of Major Teddy Indra Wijaya as Cabinet Secretary reaped pros and cons in the community.

This is because Major Teddy Indra Wijaya is still an active soldier of the Army (AD) who at the same time still receives a promotion one level higher from Major to Lieutenant Colonel as of February 25, 2025. The appointment of Major Tenddy as Cabinet Secretary and also the granting of a higher rank by some people are suspected of violating the applicable laws and regulations (Chozanah, 2025).

The phenomenon that occurs in the field of active TNI soldiers who concurrently hold positions is certainly a polemic that continues to be a problem in Indonesia. The pros and cons continue to strengthen in the community if the policy of appointing active TNI soldiers who are placed in one agency is not based on the applicable laws. Consideration of the principles of justice and usefulness is a benchmark in society in assessing the policy.

2. Problem Formulation

On the basis of the above objective circumstances, the author considers it necessary to study more deeply about "The Dual Position Problems of Active TNI Members in Occupying Civil Positions". A philosophical review of the Draft Law on Amendments to Law Number 34 of 2004 concerning the Indonesian National Army. The formulation of the problem that the author can formulate is as follows:

1. What is the legality of Active TNI members who occupy civilian positions based on Law Number 34 of 2004 concerning the Indonesian National Army?
2. What are the problems of dual positions of Active TNI members who occupy civilian positions?

3. Research Methods

This research is a normative legal research. Normative legal research is also called doctrinal law research (Amirunddin and Asikin, 2013; 118). Where the author tries to study more deeply the problem of dual positions of active TNI members in occupying civilian positions, as a philosophical review of the Draft Law on Amendments to Law Number 34 of 2004 concerning the Indonesian National Army. The data sources in this study consist of primary data sources and secondary data sources. The primary data sources are in the form of Law Number 34 of 2004 concerning the Indonesian National Army and the Draft Law on Amendments to Law Number 34 of 2004 concerning the Indonesian National Army. In addition, secondary data is in the form of reading materials, namely literature of books as

reference materials related to research problems. After the data or legal materials needed in this study are collected, the legal materials are reviewed or analyzed in an analytical descriptive manner, that is, explaining or describing all the research results that exist on the subject matter, then the explanations are concluded and presented in the form of inductive paragraphs, which are to draw conclusions from statements that are specific to the public, so that their presentation can be easily understood.

B. DISCUSSION

1. Legality of Active TNI Members Occupying Civilian Positions Based on Law Number 34 of 2004 concerning the Indonesian National Army

Post-reform has brought about substantial changes and reforms in the TNI institution. This is marked by the elimination of the dual functions of the ABRI, the elimination of political rights and the ABRI faction in Parliament. Meanwhile, in relations with the community, the TNI is no longer a tool to curb civil liberties as in the New Order era. However, TNI reform based on the MPR TAP Number VII/MPR/2000 of 2000 concerning the Role of the TNI and the National Police and Law Number 34 of 2004 concerning the TNI has not been fully implemented. Reported by the Setara Institute, there are at least 7 reform mandates in TNI institutions, namely

- a. Respect for human rights and civil supremacy, that the TNI is required to respect human rights and ensure that the principle of civil supremacy in the administration of the state is maintained.
- b. Compliance with state political policies and decisions, that the TNI does not carry out operations other than in terms of maintaining state defense except based on state political decisions and policies, which are outlined in the Law and the political decision of the President as the Commander-in-Chief of the TNI.
- c. Discipline towards Military Operations Other than War (OMSP), that OMSP can only be carried out on a limited basis based on laws and political decisions of the country
- d. Interdimensional rotation of the position of the TNI Commander, that in order to maintain the unity of the TNI, the position of Commander rotates regularly between the dimensions, the Army (AD), the Navy (AL), and the Air Force (AU).
- e. A guarantee of a decent income, that the government provides a decent income guarantee for TNI members, this not only improves the professionalism of the TNI, but also to ensure that TNI members do not run their business as during the new order period.

- f. The prohibition of occupying civilian positions, as a form of affirmation of civilian supremacy, is prohibited from occupying civilian positions.
- g. The prohibition of engaging in business and practical politics, as a tool of state defense, the TNI is prohibited from engaging in practical politics and business activities (Press Release of the Setara Institute, 2019).

As stated in Article 2 of Law Number 34 of 2004 concerning the Indonesian National Army, the identity of the TNI is as a people's army, a fighting army, a professional army and a national army, which if examined the meaning is; The People's Army is an army whose members come from Indonesian citizens. Furthermore, the Warrior Army is defined as an army that fights and does not give up to carry out its duties in upholding the Unitary State of the Republic of Indonesia. Professional Soldiers are soldiers who are educated, trained, and well-equipped, and guaranteed their welfare so that they close the space for practical politics and business positions, as well as follow the country's political policies that are based on the principles of democracy, civil supremacy, ratified national and international legal provisions, and human rights. The National Army is an Indonesian army that makes the state's duties above the interests of the region, tribe, religion, and race.

Furthermore, the position of the TNI as a state institution is regulated in the 1945 Constitution article 30 paragraphs 2, 3, and 5. In article 2, it is explained that the defense and security efforts of the state are carried out through the universal people's defense and security system by the Indonesian National Army and the National Police of the Republic of Indonesia, as the main force, and the people, as the supporting force. In article 3, it is explained that the Indonesian National Army consists of the Army, Navy, and Air Force as state tools tasked with defending, protecting, and maintaining the integrity and sovereignty of the state. Article 5 explains that the composition and position of the Indonesian National Army, the National Police of the Republic of Indonesia, the relationship and authority of the Indonesian National Army and the National Police of the Republic of Indonesia in carrying out their duties, the conditions for the participation of citizens in the defense and security efforts of the state, and matters related to defense and security are regulated by law.

The TNI as a state institution with the task of being a tool of state defense has undergone a renewal and its implementation as regulated in Law Number 34 of 2004 concerning the Indonesian National Army. Article 3 of Law Number 34 of 2004 concerning the TNI states: "(1) In the deployment and use of military force, the TNI shall be subordinate

to the President." "(2) In strategic and defense policies and administrative support of the TNI are under the coordination of the Ministry of Defense."

In carrying out its role, the TNI needs to follow what is also a decision set by the government. The TNI's actions should not be based only on the orders of the Commander. However, it must consider the results of political policies taken by the executive and legislature, and remain in the corridor regulated in laws and regulations. The formation of Law Number 34 of 2004 concerning the Indonesian National Army is a form of accommodating the TNI's need for a legal umbrella that oversees military institutions in the implementation of internal TNI reforms. Even in its formulation, the TNI was actively involved in the process of drafting this law. The presence of Law No. 34 of 2004 concerning the Indonesian National Army, as a form of implementation of internal reform of the TNI, is very necessary because the previous law, namely Law No. 2 of 1988 concerning Armed Forces Soldiers, is considered to be no longer relevant to the institutional renewal of the Indonesian armed forces into the Indonesian National Army which is based on the demands of reform and democracy and the growing legal awareness that is living in society

Institutionally, the TNI is under the President. As stated in Articles 17 and 18 of Law Number 34 of 2004 concerning the TNI can be explained as follows:

- a. Regarding the deployment and use of military force, the existence of the TNI is under the power of the President; The President can and does have absolute power to deploy military force on condition that it is approved by the House of Representatives.
- b. Urgent and compelling circumstances that do not give the President the opportunity to report to the House of Representatives, such as threatening armed or military movements, the President can deploy the forces of the TNI directly. After that, within 2x24 hours, the President is obliged to report the matter to the House of Representatives.
- c. The President must immediately stop all military operations if he does not get approval from the House of Representatives.

The TNI consists of 3 forces/dimensions, namely the Army (AD), Air Force (AU), and Navy (AL) which coordinate under the leadership of the TNI Commander and have their own tasks. The three dimensions of the TNI body are the same as each other and each is led by the Chief of Staff, namely the Officer proposed by the TNI Commander to the President and by paying attention to the career level and rank, the Chief of Staff's position and responsibilities are under the TNI Commander. The regeneration of the position of the TNI

Commander also comes from the three dimensions and is alternately carried out by meeting the applicable requirements, namely:

- a. Currently serving as Chief of Staff among the three TNI forces;
- b. Proposal through the President and approved by the House of Representatives;
- c. The President's proposal for the position of TNI Commander must be approved by the House of Representatives, or if it has not been approved, the president proposes another name as a replacement. If it is still not approved, then the House must openly make a written reason for this; 4). The President has the right to appoint a new TNI Commander if the House of Representatives does not provide a reason in writing in accordance with the provisions of the Law.
- d. In the Indonesian constitutional system, the TNI has a position as stated in Article 5 of Law Number 34 of 2004 concerning the TNI as a means of state defense that is subject to the political power of the state under the executive and legislature. The meaning of this is that every military action or operation carried out by the TNI must be through a presidential order that receives permission from the House of Representatives, except for certain circumstances. This restriction is carried out as an effort to prevent the occurrence of actions that endanger the state, for example, a coup against the state. So that the role of the TNI is clearly limited by law. The role of the TNI, which is positioned as a tool of state defense, also functions as the main component to ward off every form of military and/or armed threat that comes from within and outside the country, which is felt to threaten the integrity of the territory, state sovereignty, and national security.

The TNI has the main task of military operations as a means of national defense, namely fighting against enemies who want to destroy or control the Republic of Indonesia. The task of military operations of this war is the main function in the defense of the universe state that Indonesia embraces. The TNI serves as the front and main line in overcoming the war against the country's enemies. The duties of the TNI in their role and function as an antidote and enforcer of every threat in order to uphold the sovereignty of the Unitary State of the Republic of Indonesia and participate in helping national and international recovery. Article 7 paragraph (2) of Law Number 34 of 2004 concerning the TNI also describes 14 main tasks of the TNI, namely: Military operations for war; and Military operations other than war, namely:

- a. Addressing armed separatist movements;
- b. Countering armed insurgency;
- c. Tackling acts of terrorism;
- d. Securing border areas;
- e. Securing strategic national vital objects;

- f. Carrying out world peace tasks in accordance with foreign policy policies;
- g. Securing the President and Vice President and their families;
- h. Empower defense systems early in accordance with the universal defense system;
- i. Assisting in government tasks in the regions;
- j. Assisting the National Police of the Republic of Indonesia in the framework of security and public order tasks regulated in the Law;
- k. Assist in securing state guests as well as heads of state and foreign government representatives who are in Indonesia;
- l. Helping to overcome the consequences of natural disasters, displacement and the provision of humanitarian assistance;
- m. Assisting in search and *rescue*; and
- n. Assisting the government in securing shipping and aviation against piracy, piracy, and smuggling.

Meanwhile, the main task of military operations other than the TNI war is the task of "overcoming armed separatist movements", in this case movements from groups that arm themselves and want to separate themselves from the Republic of Indonesia. The actions of this group are known as the disintegration of the nation, which according to national and international law is an illegal act and is legal to eradicate. Overcoming armed separatist groups that want to separate is one of the heavy and dilemmatic obstacles faced by the TNI. This is due to several reasons, namely:

- a. The TNI is forced to fight its own people, which does not rule out the possibility that many TNI members are from the area, or the worst possibility that the separatist members are people who are known or have a friendly or fraternal relationship with the TNI members.
- b. The eradication of separatist groups carried out by the TNI is very prone to human rights violations. Because the enemy's interpretation of separatist groups, which are mostly of civilian origin, has many different concepts.
- c. Pressure from groups on behalf of NGOs who are not objective in responding to the problem and consider separatist groups as ordinary civil society and tend to protect them.

The next security task carried out by the TNI is the security of national vital objects that are strategic in nature. Strategic national vital objects are objects that have an extraordinary influence on the Indonesian nation, both in the field of defense and the national economy. So these vital objects include the responsibility of the TNI to secure them. The security of this vital object has actually been regulated as one of the TNI's duties in OMSP as stated in Article 7 paragraph (2) of Law Number 34 of 2004 concerning the TNI. However, in its implementation, the security of vital objects is handled by the Police. The overlap of

these tasks must be fixed to prevent friction due to those who feel more entitled to carry out the task than others. In addition to the task of maintaining state security, as a state institution, the TNI has an international task, namely participating in maintaining world peace. As already mentioned, the TNI participated in sending soldiers who participated in maintaining world peace under the UN flag, these TNI soldiers were trained with the Garuda Contingent. The TNI's participation in maintaining world peace is based on a "Free Active" foreign policy, the phrase "Free" means that Indonesia does not take sides with the western or eastern bloc (after the dissolution of the Soviet Union), or at this time it does not take sides with two countries that are at war or in dispute. Meanwhile, "Active" means that Indonesia through the TNI is actively in accordance with the mandate of the preamble to the 1945 Constitution in creating world order and peace.

Based on the description above, it can be concluded that the position, role, and function of the TNI are very prominent as a tool of state defense. The TNI as a tool of state defense is expected to be more responsible and professional in its field, so as to be able to maintain the country's authority and maintain the safety of its nation.

The legality of active TNI members in occupying civilian positions has been regulated in article 47 paragraph 1 of Law Number 34 of 2004 concerning the Indonesian National Army, it is explained that "Soldiers can only occupy civilian positions after resigning or retiring from active military service". The article reads very firmly prohibiting active TNI members from concurrently holding state civilian positions, so if an active TNI member wants to serve in an agency, he must resign from his unit. The prohibition does not necessarily mean that active TNI soldiers are prohibited from concurrently holding positions, but active TNI members are still given the opportunity to occupy positions as stipulated in article 47 Paragraph 2 that "Active soldiers can occupy positions in the office in charge of the coordinator for Politics and State, State Defense, Presidential Military Secretary, State Intelligence, State Cipher, National Resilience Institute, the National Defense Council, *the National Search and Rescue* (SAR), the National Narcotics, and the Supreme Court." These positions may be occupied by active TNI soldiers at the request of department heads as well as non-departmental government agencies.

Over time, where Law Number 34 of 2004 concerning the Indonesian National Army has reached the age of 20 years, the government together with the House of Representatives

of the House of Representatives of the Republic of Indonesia have revised the Law. The Bill on amendments to Law Number 34 of 2004 concerning the Indonesian National Army was passed by the House of Representatives on March 20, 2025 which has resulted in various changes. One of the main points in this revision is the increase in the number of ministries and institutions that can be filled by active TNI soldiers, from the previous 10 agencies to 16 agencies. With the revision carried out, there are 6 additional institutions that can now be filled by active TNI soldiers, including; National Disaster Management Agency (BNPb), National Counterterrorism Agency (BNPT), Maritime Security, Attorney General's Office, Ministry of Maritime Affairs and Fisheries, National Border Management Agency (BNPP). The positions mentioned above may be occupied by soldiers at the request of department heads as well as non-departmental government agencies.

Based on the explanation of article 47 paragraph 2 of Law Number 34 of 2004 concerning the Indonesian National Army both before the revision and after the revision of the Law, it can be understood that active TNI members can occupy positions in 16 offices that have been described in detail, this certainly opens up opportunities for active TNI soldiers to be able to devote themselves not only to the unit of duty but also to be able to devote themselves to the agency in accordance with the mandate of article 47 paragraph 2 of Law Number 34 of 2004 concerning the Indonesian National Army.

2. Problems of Dual Positions of Active TNI Members Occupying Civil Positions

The appointment of active TNI members to occupy civilian positions in an agency reaps pros and cons in the community. As an example of an active TNI member who serves in other agencies is Major Teddy Indra Wijaya as the Secretary of the Cabinet or Cabinet Secretary. This is because Major Teddy Indra Wijaya is still an active soldier of the Indonesian Army (AD). The pros and cons are further strengthened by the promotion of Teddy Indra Wijaya from Major to Lieutenant Colonel which is effective from February 25, 2025 based on the TNI Commander's Decree Number Sprin/674/II/2025.

In this regard, Deputy Chief of Presidential Staff (KSP) M. Qodari explained that no regulations were violated in the appointment of Teddy Indra Wijaya as Cabinet Secretary. Furthermore, Qodari said that the appointment of Teddy Indra Wijaya as Cabinet Secretary was appropriate, there are at least five aspects that make Teddy Indra Wijaya considered

appropriate to serve as Cabinet Secretary, one of which is that Teddy has long been a confidant of President Prabowo since he was still serving as Minister of Defense in the era of Joko Widodo's leadership, the position of Cabinet Secretary is a strategic position that must be filled by people who have the closeness and high level of trust from the number one person in Indonesia (Sadat, 2025).

Disagreeing with M Qodari, TB Hasanuddin, a Member of the House of Representatives of the Republic of Indonesia (DPR) of the PDI Perjuangan faction, expressly explained that Teddy Indra Wikawa's position as Cabinet Secretary violated the TNI Law Number 34 of 2004 concerning the Indonesian National Army, Hasanuddin said Teddy had to resign from the TNI because he had occupied the position of Cabinet Secretary, because if he did not resign as a TNI soldier, it meant that Teddy violated the applicable laws and regulations, namely article 47 paragraph 2 of the Law TNI Number 34 of 2004 concerning the Indonesian National Army (Men, 2025).

Dual positions do not only occur as in the example above, as another example is the appointment of the President Commissioner of PT. Pindad by the Minister of SOEs Erick Thohir, in accordance with the Decree SK-16/MBU/01/2024, on Monday, January 22, 2024, Erick Thohir appointed General TNI Marulli Simanjuntak as President Commissioner of PT. Pindad. Meanwhile, as is known, General Marulli Simanjuntak is an active TNI soldier who serves as the Chief of Army Staff (KSAD). The appointment of the active TNI in the SOE environment was also carried out by Minister Erick Thohir on Friday, February 7, 2025, the Territorial Assistant to the Commander of the TNI Major General TNI Novi Helmy Prasetya was appointed as the President Director of the General Company of the Logistics Affairs Agency (Perum Bulog). The appointment is contained in the Decree of the Minister of SOEs Number SK-30/MBU/02/2025 (Tempo, 2025).

The appointment of active TNI soldiers in an agency is a policy from the government which is certainly allowed as long as it does not conflict with applicable laws and regulations. Political observer Burhan Magenda argues that the involvement of the military in politics should not be a problem. According to him, the military is integrally an inseparable part of the state. Although in socio-political life the level of participation varies. Generally, most developing countries, such as Indonesia, for example, for both historical reasons and the context of the country's development, seem to have accepted the presence of the military in

socio-political life as a given. The military's involvement in the process of socio-political life in Indonesia is inseparable from the historical factors that shaped it. The discussion of military participation in civilian development life in Indonesia is also not without reason. The doctrine of the dual function of the Indonesian Armed Forces (Armed Forces of the Republic of Indonesia) initiated by Major General AH Nasution discourse so that high-ranking officers of the Indonesian Armed Forces can enter civilian positions. This is because the contribution of the military in the process of independence of the Republic of Indonesia is very large, which is felt to have a strong position to participate in determining the direction of national development (Magenda, 1998; 39).

According to Mahfud MD, the TNI's participation in the political world is because based on historical experience, the civilian government has failed to run a stable government. This can be seen from the journey of liberal democracy supported by many political parties that tend to hinder the government's performance to be good, so that various rebellions emerge. The TNI does not want to be positioned as a firefighter, so it must take a proactive role in making political decisions so that the country does not fall into destruction due to threats that are not well anticipated. The role taken by the TNI is to participate in national policy makers by entering government agencies outside the military sector (Mahfud MD, 2007; 84).

Based on the above opinion, it can be understood that the involvement of active TNI soldiers in socio-politics in Indonesia does not have to be a problem. This will certainly fulfill the principle of justice where the TNI has an important role in the process of independence of this country so it is very appropriate to be given space to participate in determining the direction of national development. In addition, the TNI also has many superior human resources (HR) and can be used according to their competencies.

C. CONCLUSION

Based on the explanation in the previous section, the following conclusions can be drawn :

1. The legality of active TNI members in occupying civilian positions has been regulated in Law Number 34 of 2004 concerning the Indonesian National Army and the Draft Law on Amendments to Law Number 34 of 2004 concerning the Indonesian National Army in

2025, that active TNI soldiers can hold positions in 16 agencies. Among them; Coordinator for Political and State Affairs, State Defense, Presidential Military Secretary, State Intelligence, State Cryptography, National Resilience Institute, National Defense Council, National *Search and Rescue* (SAR), National Narcotics, and Supreme Court, National Disaster Management Agency (BNPB), National Counterterrorism Agency (BNPT), Maritime Security, Attorney General's Office, Ministry of Maritime Affairs and Fisheries, National Border Management Agency (BNPP).

2. The appointment of active TNI soldiers to civilian positions should not be problematic as long as it does not violate the provisions of the applicable laws. This will certainly fulfill the principle of justice where the TNI has an important role in the process of independence of this country so it is very appropriate to be given space to participate in determining the direction of national development. In addition, the TNI also has many superior human resources (HR) and can be used according to their competencies.

From the conclusion that has been explained above, a suggestion can be proposed, namely; through the revision of the new TNI Law, the government should be able to carry out the mandate of the Law, especially in the appointment of active TNI members to civilian positions in accordance with the applicable laws and regulations, so that there are no pros and cons polemics in the community and the placement of active TNI members should be adjusted with the competencies of Human Resources needed in other agencies, so that later they can work professionally and responsibly.

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