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Reviewing Article 1320 of the Civil Code in the APJB Case

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Abstract: Civil law regulates and determines so that in the association of society, people can know and respect the rights and obligations of each other, so that the interests of each person can be guaranteed and maintained as well as possible. (Christina Bagenda, 2023) This research aims to analyze whether the Deed of Sale and Purchase Agreement hereinafter referred to as APJB (Elfa Mirnawati Damayantia, 2023) made by and before Khairu Subhan, S.H. as Notary (Defendant II) in Decision Number 95/PDT/2021/PT SMR has fulfilled the valid requirements of an agreement according to Article 1320 of the Civil Code. The research method used is normative with an analytical descriptive approach. The results showed that although the APJB (Elfa Mirnawati Damayantia, 2023) initially fulfilled the valid terms of the agreement, there was a default by Yusi Ananda as Defendant I in its implementation which resulted in the valid terms of the agreement no longer being fulfilled and had no legal force because Diponogoro K. Fernandez as the Plaintiff requested a request for annulment to the Court.

Civil Law regulates and determines that in social interactions, people can know and respect each other's rights and obligations, so that the interests of each person can be guaranteed and maintained as well as possible. (Christina Bagenda, 2023) This study aims to analyze whether the Deed of Sale and Purchase Agreement, hereinafter referred to as APJB (Elfa Mirnawati Damayantia, 2023) made by and before Khairu Subhan, S.H. as Notary (Defendant II) in Decision Number 95/PDT/2021/PT SMR has met the requirements for a valid agreement according to Article 1320 of the Civil Code. The research method used is normative with a descriptive analytical approach. The results of the study show that although the APJB (Elfa Mirnawati Damayantia, 2023) initially met the requirements for a valid agreement, there was a breach of contract by Yusi Ananda as Defendant I in its implementation which resulted in the requirements for a valid agreement no longer being met and having no legal force because a request for cancellation was requested from the Court by Diponogoro K. Fernandez as the Plaintiff.

Keyword: Article 1320 of the Civil Code, APJB, Default.

INTRODUCTION

Safioedin is of the view that civil law is a law that contains legal regulations and provisions covering legal relations between one person and another (between one legal subject and another

legal subject) in society with an emphasis on individual interests. (Rizkisyabana, 2021) According to Soebekti, a legal subject is a bearer of rights or a subject in law, namely "person", while according to Sudikno Mertokusumo, a legal subject is anything that can obtain rights and obligations from the law. (Rizkisyabana, 2021) Everything here refers to "person (human/natuurlijk person)" and "legal entity (rechtspersoon)". Humans have the status/are recognized as legal subjects from birth until death.

A name is a sign that is needed to distinguish one person from another, as well as to know their rights and obligations. In Title II of the Civil Code Book Articles 5a to 12, regulates names, changes of names, and changes of first names. These provisions apply to the European group and those who are equated. The Indonesian Population Group is divided into two, namely 1. Indonesian Citizens originating from I. Indonesian Group, II. Foreign Eastern Group: Chinese/non-Chinese, III. European Group; and 2. Foreigners originating from: I. Europeans, II. Foreign Easterners: Chinese/non-Chinese, III. Indonesians for example: Indonesian women who marry foreigners/Indonesians who become Soldiers of other Countries. A person's citizenship is a factor that influences a person's rightful authority. The authority is limited by Citizenship (Basic Agrarian Law Number 5 of 1960 hereinafter referred to as UUPA which decides that only Indonesian Citizens can have Ownership Rights. Ownership Rights (eigendom rights) according to Article 570 of the Civil Code are the rights to enjoy the use of an object freely, and to act freely towards the object with full sovereignty, as long as there is no error with the law or legal regulations stipulated by a power that has the right to stipulate it, and does not interfere with the rights of others; all of this without reducing the possibility of revocation of the right in the public interest based on the provisions of the law and with the payment of compensation), (Indonesia/Basic Agrarian Law Patent No. 5, 1960) Residence (UUPA which decides that only people who live in the same sub-district as the location of the agricultural land can be its owner), (Indonesia/Basic Agrarian Law Patent No. 5, 1960). Position or Title (For a Judge and other Legal Officials may not obtain goods that are still in the case) and Behavior or Actions (the content of the authority of parents and guardians can be revoked by court decision in the event that he/she seriously neglects his/her obligations as a parent/guardian or behaves badly). (Indonesia/Patent Law No. 1, 1974) Domicile is a translation of *domicilie/woonplaats* which means that a person is considered to always be present regarding exercising his/her rights and fulfilling his/her obligations even though in reality he/she is not there. (Definition of Domicile - pakdosen.co.id, 2024) Every human being, both Citizens and Foreigners, is a bearer of rights, has the rights and obligations to carry out legal acts including making agreements with other parties on the condition that they have legal capacity (*rechtsbekwaamheid*) and legal authority (*rechtsbevoegdheid*).

Humans as a social function need other Humans to interact with each other. Humans need rules that can anticipate the possibility of a dispute that will occur in the future by making an agreement. An agreement is an event in which a person promises to another person or where two people promise each other to do something (Article 1313 of the Civil Code defines an agreement as an act carried out by one or more people against one or more people) from this event a relationship arises between the two people called an agreement. An agreement arises from "agreements and" laws ". An agreement is a series of words containing promises or abilities that are spoken or written. An agreement is also called an agreement, because the two parties agree to do something. (Rio Utomo Hably, 2015).

An agreement is an abstract concept, while a covenant is something concrete or an event. If two people enter into an agreement, they intend for a legal agreement to be enforced between them. If one party does not respect or violates the legal relationship, the law forces the relationship to be fulfilled or restored. Meanwhile, if one party does not fulfill its obligations, the law forces the obligations to be fulfilled. (Rusli, 2012) This bond is only broken if the promise has been fulfilled.

People often use the term agreement, even though it is only agreed verbally. Oral agreements are permitted by the Civil Code, hereinafter abbreviated as the Civil Code, but in practice the legal force of oral agreements is very weak when compared to written agreements. Written agreements are important in the business world because they concern the continuity of the business being run and concern the rights and obligations that aim for legal certainty. Agreements are made based on agreements, if problems arise as a result of the agreement, the resolution can be returned to the contents of the agreement, which is why it is highly recommended that an agreement be made in writing to realize the desired legal certainty. (Sjachran, 2021).

APJB can be said to be an initial agreement or preliminary agreement. According to Herlin Budiono, APJB is also called a Sales-Purchase Binding Agreement, which means an assistance agreement that functions as a preliminary agreement in free form. (Heru Prayitno, 2023) Based on the Regulation of the Minister of Public Works and Public Housing of the Republic of Indonesia, hereinafter referred to as Permen PUPR Number 11/PRT/M/2019 concerning the Preliminary Home Sale and Purchase Agreement System, Article 1 number 2 states that the Preliminary Sale and Purchase Agreement or Sales and Purchase Binding Agreement, hereinafter referred to as PPJB, is an agreement between the developer and each person to carry out the sale and purchase of a house or apartment unit that can be carried out by the developer before construction for apartments or in the construction process for single houses and row houses stated in a Notarial Deed. The provisions governing PPJB are Article 1338 of the Civil Code, while other provisions are Government Regulation Number 34 of 2016 concerning Income Tax on Income from the Transfer of Rights to Land and/or Buildings and PPJB on Land and Buildings and its Amendments in conjunction with Regulation of the Minister of Finance of the Republic of Indonesia Number 261/PMK.03/2016 concerning Procedures for Depositing, Reporting, and Exemptions from the Imposition of Income Tax on Income from the Transfer of Rights to Land and/or Buildings, and PPJB on Land and/or Buildings and its Amendments. (Heru Prayitno, 2023) In the case of Decision Number 95/PDT/2021/PT SMR, the legal subjects are the Plaintiff, Defendant I and Notary (Defendant I), each of whom is a bearer of rights. The Plaintiff has the right and obligation to perform legal acts including making an agreement in the form of an APJB before a Notary with Defendant I because the Plaintiff has the legal capacity (*rechtsbekwaamheid*) and legal authority (*rechtsbevoegdheid*). APJB is a proof letter made in advance and before a Notary, which regulates and contains the rights and obligations between the first party/prospective Seller and the second party/prospective Buyer, where the first party promises and binds himself to buy the object to be sold if all the requirements have been met. The requirements listed in the definition are things that must be done by both the prospective Seller and the prospective Buyer, including: all payments for the price of the goods have been paid in full, and the documents or letters relating to the object or goods are complete. (HS, 2017)

The requirements for the validity of making an Authentic Deed in the form of an APJB in Law Number 2 of 2014 concerning amendments to Law Number 30 of 2004 concerning the Position of Notary Public, hereinafter referred to as UUJN, are: (39) Appearer; and Witness. The appearer is a legal subject who is at least 18 (eighteen) years old, capable of performing legal acts, the appearer must be known to the Notary or introduced to him by 2 (two) identifying witnesses. The introduction is stated explicitly in the deed. ((1) P. 3.) The requirements to become a witness are regulated in Article 39 paragraph (2) UUJN.

Then regarding the rights and obligations of each in relation to the APJB are as follows:

1. The Plaintiff is a Party in the APJB who has rights, one of which is to receive full payment from Defendant I for the sale of a plot of land including a house building and everything standing and planted on it with an area of $\pm 971 \text{ M}^2$ (approximately nine hundred and seventy one square meters) located in Mesjid Village, Samarinda Seberang District,

Samarinda City, East Kalimantan Province, while one of its obligations is to complete all the documents needed to make the APJB so that the APJB is perfect;

2. Defendant I is a Party in the APJB who has rights, one of which is to receive clear information regarding the legal standing (clarity of name, citizenship, permanent residence/domicile) of the Plaintiff as a guarantee of a sense of security to buy, while one of its obligations is to pay in full the sale and purchase price that has been agreed upon with the Plaintiff as stated in the APJB; and

3. Notary is not a Party in APJB, but a Public Official who has the right and main authority, namely to make Notarial Deeds (Article 1 number 7 UUJN) in this case APJB. APJB is an Authentic Deed based on Article 1 number 1 UUJN, (Rudy Haposan Siahaan, 2022) while the obligations of a Notary as per Article 4 paragraph (2) and Article 16 paragraph (1) UUJN, one of which is to keep confidential everything related to the Deed made before and related to his duties and position.

Then it can also be explained regarding the reasons for each (one reason) being in a court decision as follows:

1. The Plaintiff filed a lawsuit against Defendant I because Defendant I had committed a breach of contract, namely not making payments as per APJB Number 02 Dated January 2, 2018 which had been agreed between the Plaintiff and Defendant I before a Notary.

2. Defendant I filed an appeal against the Plaintiff because Defendant I felt that the Plaintiff's legal standing was unclear, such as: the Plaintiff's name in the Certificate of Ownership. (Djaja, 2024) Ownership Rights are based on the provisions of Article 20 - 27 of the UUPA. Based on Article 20 Paragraph (1) of the UUPA, Ownership Rights are hereditary, strongest and most complete rights that a person can have over land, taking into account the provision that all land rights have a social function. and the Resident Identity Card hereinafter referred to as KTP is Diponogoro, while the name in his Passport is Diponogoro K. Fernandez, then the citizenship in the KTP is WNI, while the address he lives in on the KTP does not match, and is now residing and living abroad, these reasons made Defendant I suspicious so that he decided not to continue payments to the Plaintiff as long as the Plaintiff had not completed the documents requested by Defendant I at the request of the Notary. 3. The notary is included in the lawsuit because the Plaintiff wants to file a request for cancellation of the APJB made by and before the Notary on the grounds that Defendant I has committed a breach of contract regarding the APJB regarding payment procedures.

This study aims to examine in more depth the application of Article 1320 of the Civil Code in the APJB case and is expected to provide a significant contribution and become a recommendation for reform towards the development of legal science, especially in the field of contract law, by presenting a legal analysis regarding the application of the principles of contract law in Indonesia and the legal consequences arising from the failure to fulfill the requirements for the validity of the agreement.

METHOD

Legal research according to Soerjono Soekanto is a form of scientific activity, which is based on certain methods, systematics, and thoughts, which aims to study one or several specific legal phenomena, by analyzing them. The focus is on laws and regulations related to the requirements for the validity of an agreement. This research is descriptive analytical, aiming to provide an explanation of the phenomenon being studied. (Ramadhan, 2021).

The data used is secondary data, which includes Primary Data: Law on the Position of Notary, Civil Code, and Court Decisions. Secondary Data: books, journals, seminar results, magazines, media articles, opinions of legal practitioners, teaching materials, and other relevant writings. Data Collection Techniques are carried out through literature studies.

Data analysis is carried out qualitatively to determine whether the APJB made by and before a Notary in Decision Number 95/PDT/2021/PT SMR has met the requirements for the validity of an agreement according to Article 1320 of the Civil Code.

RESULTS AND DISCUSSION

Theory of Agreement

An agreement is an act by which one or more people bind themselves to one or more other people. According to J. Satrio, an agreement in a broad sense is an agreement that has legal consequences as desired by the parties, including marriage, prenuptial agreements, and others. The narrow sense here only refers to legal relations in the field of property law as referred to in Book III of the Civil Code (1233 - 1864).

The elements of an agreement according to Sucipto, 2011 are the existence of legal regulations, the existence of legal subjects, the existence of achievements, the existence of an agreement and legal consequences.

Principles of Agreement Law

Some of the legal principles known in making a deed of agreement include the following: (Miru, 2020)

1. Principle of Consensualism

The principle of consensualism is a principle that states that an agreement does not have to be formal but can only be stated by agreement of the parties. An agreement that is a match between the will and the statement made by the parties. This is a reflection of Article 1320 paragraph (1) of the Civil Code, namely fulfilling the requirements for skill in making an agreement.

2. The principle of freedom of contract (het beginsel van de vrijheid van contract)

The principle of freedom of contract is the meaning of the provisions of Article 1338 paragraph (1): "All agreements made legally apply as law for those who make them." A principle that gives freedom not to need or need to make an agreement, Make an agreement with another party, Determine the content, terms and conditions and its implementation, and Determine whether verbally is sufficient or must be in writing. The principle of Freedom of Contract remains limited by regulations that are coercive and must not harm third parties, so the parties must comply with the agreement.

3. Principle of Legal Certainty (pacta sunt servanda)

The principle of legal certainty or pacta sunt servanda is the aim of Article 1338 paragraph (1) of the Civil Code which relates to the consequences of agreements. The third party or Judge must respect and may not intervene in the substance (the substance of the deed of sale and purchase agreements binding/ de essentie van de akte van verkoop en aankoop overeenkomsten bindend) is the will of the prospective Seller, namely to hand over the object of sale and purchase and have the right to receive money from the prospective buyer. The will of the prospective Buyer is to buy the object of sale and purchase and receive it, while the obligation is to hand over the money to the prospective Seller) of the agreement made by the parties, the agreement must be viewed as a Law. If one of the parties violates it, then legal sanctions can be imposed as stipulated by law (agreement). (Gumati, 2012)

Agreement law is one of the main pillars in the civil law system in Indonesia, which functions to regulate legal relations between the parties involved in civil transactions.

Book III of the Civil Code mentions contracts, not contract law (verbintenissenrecht), as in Article 1233, Every contract is born either because of an agreement or because of a Law. Contract law (overeenkomstenrecht) is one of the fundamental aspects in the Indonesian civil law system that regulates legal relations between legal subjects in civil transactions. Soebekti uses the term contract (overeenkomst), not a contract or agreement, but for the term sale and purchase agreement or lease agreement, (Kansil, 2019) these terms are terms given by law. The

sale and purchase agreement is specifically regulated in Book III of the Civil Code which begins with Article 1457 to Article 1540, so it is classified as a named agreement (benoemde or nominaatcontracten).

As an integral part of the Civil Code, Article 1320 stipulates the conditions for the validity of an agreement with the following scheme:



Figure 1. Scheme for the division of obligations in Book III of the Civil Code

1. Agreeing of those who bind themselves.

The word agreement is the beginning of the intention to form an agreement from both parties without any coercion and those who want something the same reciprocally.

2. Their ability to make an agreement.

An agreement can only be made by people who are considered adults and of sound mind. People who are not capable of making an agreement are (1330) people who are not adults, those who are placed under guardianship, women in cases stipulated by law (Supreme Court Circular Letter Number 3 of 1963 dated September 5, 1963, making several provisions in the Civil Code no longer valid, one of which is Article 108-110 concerning the incompetence of a wife), and all people to whom the law has prohibited making certain agreements.

3. A certain thing.

In an agreement there must be an object or a certain thing, that what is agreed upon the rights and obligations of both parties if a dispute arises. An agreement must have a subject matter of an object that can at least be determined in type and must be considered unclear.

4. A lawful cause.

With a lawful cause (oorzaak/causa) which is an element of an agreement that does not conflict with applicable laws, general provisions, morals and ethics. (1335) An agreement can be invalid (illegal) if it conflicts with public policy (Ulfa Hasanah, 2023) and has a negative impact on society or disrupts public safety and welfare.

The conclusion must be linked to the title and answer the research formulation or objectives. Do not make statements that are not adequately supported by your findings. Write down improvements made to industrial engineering or science in general. Don't create further discussion, repeat abstracts, or simply list research findings. Don't use bullet points, use paragraph sentences instead.

Conditions number 1 and number 2 are called subjective conditions because they concern the people or subjects who enter into the agreement, while numbers 3 and number 4 are called

objective conditions because they concern the agreement itself or the object of the legal act carried out.

If the subjective requirements are not met, then the agreement is null and void, meaning that from the beginning an agreement was never born or there was never an obligation, then there is no basis for suing each other in court, such an agreement is null and void, while if the objective requirements are not met, the agreement can be requested to be canceled by the court. Such an agreement is vernietigbaar.

A deep understanding of the requirements for the validity of an agreement is crucial to ensure that the transactions carried out are not only legally valid, but also fair and just for the parties involved. Failure to comply with one of these requirements can result in the agreement being null and void or can be canceled, which in turn can cause legal uncertainty and losses for the parties.

The APJB case presented in Decision Number 95/PDT/2021/PT SMR is one example of a case study to examine the application of Article 1320 of the Civil Code in practice. This case involves a dispute between the Plaintiff and Defendant I, related to a property sale and purchase agreement. The term property does have many meanings, but is generally always related to the issue of ownership rights. KBBI defines "property" as assets in the form of land and buildings as well as facilities and infrastructure that are an inseparable part of the land and/or buildings in question; owned land and buildings. (Bahasa, 2024) The Plaintiff argued that Defendant I had committed a breach of contract by not fulfilling the obligation to pay in full in accordance with the provisions of the APJB.

This case attracted attention because it involved an agreement made before a Notary which should have provided more assurance of the validity and legal certainty of the agreement. However, in reality, the court had to re-examine whether all the conditions for the validity of the agreement had been met. The court's decision in this case provides valuable insight into the application of the principles of contract law in Indonesia, as well as the legal consequences of violating these conditions.

The relationship between Article 1320 of the Civil Code and the case in Decision Number 95/PDT/2021/PT SMR is as follows:

1. Agreement of the Parties.

Agreement is the first requirement in Article 1320 of the Civil Code. In this case, the initial agreement was realized through APJB Number 02 dated January 2, 2018. The Plaintiff and Defendant I agreed to buy and sell a plot of land including a house building and everything standing and planted on it with an area of $\pm 971 \text{ M}^2$ (approximately nine hundred and seventy-one square meters) located in Mesjid Village, Samarinda Seberang District, Samarinda City, East Kalimantan Province at a price of IDR 800,000,000 (eight hundred million rupiah).

However, this agreement was disrupted when Defendant I failed to fulfill his obligations in paying installments from a total of 6 (six) installments that had been agreed upon, Defendant I only paid IDR. 260,000,000,- (two hundred and sixty million rupiah). This failure gave rise to legal issues which were then brought to court.

2. Competence to Make Contracts.

The second requirement is the competence of the parties. In Decision Number 95/PDT/2021/PT SMR, there is no indication that the competence of the Plaintiff, Defendant I, or Notary is questioned, all of them are considered legally competent, the Plaintiff and Defendant I are competent to make a sale and purchase agreement which is then realized in the form of an APJB by the Notary as Defendant II.

3. A Certain Matter.

The third condition, the object of the agreement in this case is clear and certain, namely a plot of land rights including a house building and everything that stands and is planted on it with an area of $\pm 971 \text{ m}^2$ located in Mesjid Village, Samarinda Seberang District, Samarinda City, East

Kalimantan Province based on the Certificate of Ownership hereinafter abbreviated as SHM Number 668. Measurement Letter Number: 2699/1999 dated June 16, 1999 and registered in the name of Diponegoro. Building Construction Permit hereinafter abbreviated as IMB in the name of Ester Yang Gun.

4. A Lawful Cause.

The land sale and purchase agreement is a lawful cause and recognized by law. In Decision Number 95/PDT/2021/PT SMR, there is no indication that the purpose in the APJB made by the Notary violates the law or morality which makes the fourth condition fulfilled.

The reason that emerged from Defendant I was regarding the Legal Standing of the Plaintiff. Defendant I in his appeal questioned the Plaintiff's legal standing with the argument that the Plaintiff is not an Indonesian citizen but a Foreign Citizen, hereinafter abbreviated as WNA. In Decision Number 95/PDT/2021/PT SMR, the judge examined evidence and witnesses regarding the Plaintiff's legal standing, there was no issue for this problem, the East Kalimantan High Court in its considerations emphasized that:

1. The Plaintiff has proven himself as an Indonesian citizen through the evidence submitted, including the KTP and Family Card, hereinafter abbreviated as KK.
2. Defendant I could not prove his argument that the Plaintiff is a foreign citizen.
3. The Plaintiff's ownership of land as evidenced by the SHM also strengthens the Plaintiff's status as an Indonesian citizen, considering that foreign citizens cannot have ownership rights to land in Indonesia.

These considerations have important value for the validity of the agreement and the rights of the Plaintiff, including:

1. Validity of the Agreement

With the proof of the Plaintiff's status as an Indonesian citizen, the capacity requirements in Article 1320 of the Civil Code are fulfilled. This strengthens the validity of the APJB that has been made.

2. Ownership Rights

The Plaintiff's Indonesian citizen status confirms his legitimacy as the legal owner of a plot of land including a house building and everything that stands and is planted on it with an area of $\pm 971 \text{ m}^2$ located in Mesjid Village, Samarinda Seberang District, Samarinda City, East Kalimantan Province based on the Certificate of Ownership hereinafter abbreviated as SHM Number 668. Measurement Letter Number: 2699/1999 dated June 16, 1999 and registered in the name of Diponegoro. The Building Construction Permit, hereinafter abbreviated as IMB in the name of Ester Yang Gun, is the object of the agreement, in accordance with the UUPA which only allows Indonesian citizens to have Ownership Rights to land.

3. Right to Sue

The proof of the Plaintiff's legal standing strengthens his position to file a lawsuit and demand his rights for the breach of contract committed by Defendant I.

The results of the study show that initially the APJB made by and before a Notary between the Plaintiff and Defendant I was a perfect APJB because it had fulfilled the four elements of the requirements for a valid agreement as referred to in Article 1320 of the Civil Code, however, even though the APJB was made in the form of a notarial deed, the panel of judges in their considerations stated that there had been a violation of the contents of the agreement by Defendant I in the form of failure to make full payment. Therefore, the legal consequence of this violation is that the APJB is declared null and void (*nietig*) and has no binding force. This decision confirms the guarantee of legal certainty of an agreement.

CONCLUSION

This case provides several important lessons in the practice of property sale and purchase agreement law, including the following:

1. This case demonstrates the importance of conducting a thorough due diligence investigation into the legal status and identity of the parties before entering into an agreement.
2. Agreements must be drafted carefully, considering all relevant legal aspects, including the citizenship status of the parties in a property transaction.
3. This case emphasizes the importance of formal documents such as KTP, Passport, KK, SHM, IMB, PBB, and other related documents to prove a person's legal status, especially in property disputes.
4. Decision Number 95/PDT/2021/PT SMR illustrates the serious consequences of default in a property sale and purchase agreement, including cancellation of the agreement and the obligation to return the disputed object.
5. This case also highlights the important role of a Notary in ensuring the validity of the agreement and the identity of the parties, as well as the importance of careful verification of the submitted documents.

This case is a real example of how the principles in Article 1320 of the Civil Code are applied in practice, as well as how the courts interpret and apply the law to achieve justice in property disputes. It also emphasizes the importance of a thorough understanding of contract and property law, for all parties involved in real estate transactions (Real Estate includes land and all its possessions or rights contained therein and anything formed or placed on it either by natural or man-made events) (Djaja, Real Estate Law, 1st Edition, 2020) in Indonesia.

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