**Ensuring Fair Legal Protection for Organ Donors in Indonesia**

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**Abstract**

Organ transplantation is a crucial medical intervention to save lives, but its implementation must be accompanied by fair legal protection for donors. In Indonesia, despite being regulated in Law No. 17/2023 on Health and its implementing regulations, there are still weaknesses in the protection of donor rights, lack of incentives, and low public awareness of the importance of organ donation. This article analyzes the existing legal system and offers policy reformulations based on justice, ethics, and respect for human rights. The research used a normative juridical method by analyzing national regulations and international practices. The findings show that current regulations do not fully guarantee reciprocal justice and respect for altruistic acts. The article recommends strengthening regulations, strict supervision, and public education so that the transplant system in Indonesia grows within a just, ethical, and humane legal framework.

Keywords: Legal protection; Organ transplantation; Organ donor; Fair; Ethical

1. INTRODUCTION

Organ transplantation, a monumental medical advancement, is instrumental in saving lives and improving the quality of life for patients grappling with organ failure (Bakhtiar, Handar Subhandi, Maddussila, 2024). However, the success of transplantation is heavily reliant on the availability of donor organs (Lakkis, 2023). In Indonesia, the demand for organ transplantation is surging, yet the number of organ donors is severely limited. In 2023, over 172,000 organ transplant procedures were performed globally. Kidney transplantation, the most common type, accounted for about 65% of all transplants, with liver transplants making up approximately 24% (Elflein, 2025). The scarcity of donor organs is a critical issue that needs urgent attention (Olawade et al., 2024).

In Indonesia, the need for kidney transplants is escalating, mirroring the rising prevalence of chronic kidney disease due to factors such as diabetes mellitus, hypertension, and unhealthy lifestyles. Data from the 2013 Basic Health Research (Riskesdas) revealed that the prevalence of kidney failure among Indonesians was 0.2%, or 2 per 1,000 people, totaling 499,800 individuals (Budiman, 2013). By 2018, the prevalence of kidney failure had surged to 0.38%, or approximately 713,783 people (Kementerian Kesehatan RI, 2018). A survey by the Indonesian Society of Nephrology (Pernefri) found that about 12.5% of the population, or roughly 25 million Indonesians, are experiencing declining kidney function. Kidney failure patients have also significantly increased, from 19,612 cases in 2014 to around 100,000 cases in 2019 (Erpiyana et al., 2024). This data underscores the pressing need for organ transplantation as a life-saving medical intervention.

Amid the escalating demand for organ transplantation, the role of living donors—both related and unrelated—has become increasingly crucial in supporting the national transplantation system (Vanholder et al., 2021). However, behind this medical urgency lie numerous unresolved legal issues, particularly protecting donors' rights. Many donors have not received adequate legal safeguards, including post-donation health care, social security, and the right to complete and accurate information (Shroff, 2009). This situation raises concerns about potential exploitation and violations of human rights. Therefore, an urgent need is to formulate a comprehensive legal protection framework for living donors as an integral part of Indonesia's national transplantation system.

Such protection is necessary because living donors face physical, psychological, and social risks and long-term consequences. Following the donation procedure, donors are often not provided with long-term health guarantees, psychological support, or sufficient legal protection in the event of complications or future health issues. This disparity in treatment between recipients and donors is an apparent injustice, raising concerns over justice and fairness. From a legal perspective, a system that fails to protect donors equitably violates fundamental human rights, particularly the right to health, safety, and equal protection under the law.

In Indonesia, the legal framework for organ transplantation is governed by several regulations, such as Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024 as its implementing regulation, and Minister of Health Regulation No. 38 of 2016 on implementing Organ Transplantation. However, these regulations predominantly focus on procedural matters and preventing organ trafficking, while long-term donor protection remains neither explicitly addressed nor comprehensively regulated. This lack of comprehensive regulation creates a legal vacuum that may disadvantage donors should post-transplant complications arise. It is crucial to fill this gap with a comprehensive legal protection framework.

Justice is a key concern in organ transplantation, demanding a balance between the recipient's rights and the donor's contribution. Many countries have adopted reciprocal approaches, such as prioritization systems for donors who may require future transplants, to encourage fairness and increase donor numbers. Indonesia has yet to explicitly adopt such mechanisms in its legal system explicitly, even though applying principles of distributive and participatory justice could provide a significant incentive for individuals to become donors.

This study aims to critically examine the existing legal framework governing donor protection in Indonesia, identify regulatory weaknesses, and offer justice-based approaches for legal reform. The objective is to develop a legal framework that ensures comprehensive and fair protection for kidney donors—covering medical, social, economic, and legal aspects. In doing so, Indonesia can aspire to build a sustainable, ethical, and equitable transplantation system that addresses the needs of patients and guarantees the rights and welfare of those who make such life-saving contributions.

1. LITERATURE REVIEW

Organ transplantation has become a crucial issue in global health law as it directly intersects with human rights, particularly the right to life and health. Several relevant international legal instruments have addressed this matter, including the Universal Declaration on Bioethics and Human Rights (UNESCO, 2005), emphasizing the need to protect human dignity, integrity, and individual autonomy in biomedical practices, including organ transplantation. This declaration affirms that medical interventions must be carried out based on the free and informed consent of the individual concerned. It has been followed by the WHO Guiding Principles on Human Cell, Tissue, and Organ Transplantation (2010), which outline core principles such as transparency, equitable distribution, and the prohibition of donor exploitation—especially for individuals in economically or socially vulnerable positions—who must be protected under the law.

Legal protection is a crucial shield that safeguards citizens against arbitrary actions, ensuring justice, legal certainty, and utility (Sutikno et al., 2024). As Satjipto Rahardjo emphasizes, legal protection is not just about legal norms but also about the law's commitment to protect the weak and vulnerable (Raharjo, 2006). Organ donors fall into this vulnerable category, often influenced by economic hardship, social pressure, or familial coercion. Therefore, they must be provided with robust legal protection, ensuring they are treated with fairness and dignity.

Legal justice, a cornerstone of modern legal systems, ensures the equal protection of individual rights under the law. As John Rawls (1971) eloquently stated, justice demands that everyone be treated as a legal subject with equal rights and safeguards (Rawls, 1999), even in medical contexts. In organ transplantation, legal justice guarantees that all parties—recipients and donors alike—receive adequate legal protection and do not suffer harm due to their participation in the process. This emphasis on legal justice provides all involved reassurance and a sense of security (El Haque, et al., 2023).

Within health law, the principle of justice is a beacon that guides the fair and non-discriminatory distribution of health resources and the ethical treatment of patients and donors. Beauchamp and Childress, in their seminal work Principles of Biomedical Ethics (2013), outline three key dimensions of justice in health care: distributive, procedural, and compensatory (Beauchamp and Childress, 2019). In organ transplantation, distributive justice ensures the fair allocation of available organs; procedural justice dictates how medical decisions are made and communicated; and compensatory justice becomes crucial when donors suffer medical or social consequences following transplantation. This commitment to justice ensures that donors receive complete and accurate information, can ask questions, and fully understand the risks and implications of their decision. Fair compensation and continued support should be provided if adverse outcomes occur, reinforcing the commitment to ethical treatment.

1. MATERIALS AND METHODS

This juridical normative legal research is significant as it delves into the legal aspects related to protection for organ donors in Indonesia. This type of research is particularly relevant as it focuses on analyzing legal norms contained in legislation and other relevant legal documents, both national and international, within the unique context of Indonesia's legal system. The approaches used in this research are clear and well-defined. A comparative legal approach is employed, which involves comparing the legal framework for the protection of organ donors in Indonesia with several other countries, such as Iran, Chile, and Singapore. These countries were chosen as they already have mature legal systems and organ transplant policies. The aim is to identify best practices that can be adopted or adapted in Indonesia. In addition, a conceptual approach is used to explore the theories of legal justice, human rights, and medical ethics that underpin the protection of organ donors.

The data sources in this research, drawn from secondary legal materials (Noor, 2023), such as Law No. 17 of 2023 on Health and its implementing regulations, international conventions, and policy documents or reports from world health organizations, are comprehensive and reliable. The data analysis is carried out qualitatively, descriptively, and systematically describing the content of legal norms and legal practices. The thoroughness of our analysis is further demonstrated by our prescriptive approach, providing arguments and legal policy proposals to strengthen legal protection for organ donors in Indonesia.

1. RESULTS AND DISCUSSION
   1. Legal Framework on Organ Transplantation in Indonesia

Organ transplantation is a medical procedure with profound humanitarian value (Rouahna, 2025). It involves the transfer of organs or tissues from a donor to a recipient to cure diseases and restore the recipient's health. An organ is a group of tissues that work together to perform specific bodily functions, while tissue refers to a collection of cells with similar form and function. Tissues can be categorized based on their regenerative capability, which is repairing or replacing damaged cells. Tissues that can regenerate include skin and blood, while those that cannot regenerate include heart and brain tissues. Organ transplantation serves as a replacement (alternative) therapy for patients experiencing organ failure, often yielding more favorable outcomes than conservative treatment methods. The organs transplanted may come from living donors or cadaveric (deceased) donors.

To ensure legal certainty in the implementation of organ transplantation, the Indonesian government has enacted several regulatory instruments, including Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024 as its implementing regulation, and Minister of Health Regulation No. 38 of 2016 on the Implementation of Organ Transplantation. These regulations reflect the government's unwavering commitment to providing legal protection and health guarantees for donors, recipients with organ dysfunction, transplant-performing hospitals, and medical professionals. Article 123 of Law No. 17/2023 stipulates: "To treat diseases and restore health, organ and/or tissue transplantation, cell-based and/or stem cell therapy, and reconstructive and aesthetic plastic surgery may be performed." Organ transplantation is considered the most effective and comprehensive treatment option for patients suffering from organ failure, including heart, liver, pancreas, lungs, intestines, corneas, and kidneys (Heinrich & Marcangelo, 2009).

Indonesian law maintains that organ transplantation must be grounded in humanitarian reasons and requires the consent of the donor or their heirs or family. It must also be non-commercial, as stated in Article 124 of Law No. 17/2023, which affirms that organ and/or tissue transplantation must be conducted solely for medical treatment and health recovery and only for humanitarian reasons. The government seeks to increase the availability of transplantable organs by promoting voluntary donation and recognizing the rights of donors who contribute their organs for humanitarian purposes. This is further supported by Article 133 of the same law, which states: "The Central Government, Regional Governments, and/or recipients may provide recognition or awards to organ donors. Such awards may be granted to donors and/or donors' heirs."

Both the Central and Regional Governments bear responsibility for promoting organ transplantation and recognizing the contributions of donors or their heirs. This responsibility includes creating awareness about the importance of organ donation, facilitating the donation process, and ensuring the rights of donors are protected. These efforts are rooted in the principle of respecting the right to one's bodily organs, especially for individuals who have voluntarily donated them. These donors deserve legal certainty and protection as part of efforts to increase the number of organ donors in Indonesia and support the effective implementation of transplantation procedures for patients suffering from organ failure. Providing recognition or awards from the government or the recipients represents a state obligation to protect its citizens' rights, which aligns with the principles of a rule-of-law state.

Organ donation in Indonesia must be based on the principle of voluntariness. This means that the decision to donate organs should be made freely, without any form of coercion or financial inducement. Any donation involving financial compensation is deemed unlawful and subject to criminal penalties, as stipulated in Article 183 of Law No. 17 of 2023. However, the distinction between voluntary and compensated donation is often blurred in practice. Numerous cases have been found where individuals from low-income backgrounds donate organs in exchange for some form of compensation (Indriyanto, et al., 2023). These practices reveal the shortcomings of the current legal framework in effectively preventing organ commercialization. The absence of a comprehensive data and monitoring system creates opportunities for illicit activities. Therefore, there is an urgent need to strengthen oversight mechanisms and establish an independent body to ensure organ donations are voluntary.

One of the significant gaps in the current legal framework is the absence of protection guarantees for organ donors after undergoing transplantation procedures. In many cases, donors experience long-term health complications such as reduced kidney function, infections, or psychological disorders. However, there is no legal obligation on the part of the state or hospitals to provide long-term protection or compensation. Health insurance for organ donors is also not mandated, and most donors must bear the cost of post-transplant medical care themselves. This raise concerns that donors' altruistic spirit may later become a social and economic burden. The state should formulate policies that guarantee the rights of donors to long-term health monitoring, lifelong health insurance, and employment protection to ensure that they do not suffer economically due to the medical acts they undertook in the name of humanity.

* 1. Justice and Ethical Principles in Organ Donation

Organ donation is a vital part of modern healthcare systems, aimed at saving lives and improving the quality of life for patients. However, organ donation involves not only medical aspects but also raises crucial ethical and justice issues that are essential to regulating and guiding organ transplantation in a humane, transparent, and dignified manner. The principle of justice must serve as a primary foundation, encompassing distributive and procedural justice (Rahman & Karim, 2022). Distributive justice refers to the fair allocation of organs to patients based on medical needs rather than economic capability or social status. Procedural justice, on the other hand, involves transparent and accountable processes.

In organ donation, the principle of justice requires that the organ distribution system be implemented transparently, fairly, and without discrimination. This is especially important because organ transplantation involves life and the potential for improved quality of life for patients in urgent need. Every patient on the transplant waiting list must be assessed objectively based on medical condition, urgency, and the likelihood of success—not based on social status, economic background, or personal relationships. One's financial capacity must not influence organ distribution. If such practices are allowed, the transplant system risks transforming into an exploitative black market where the wealthy have an advantage in accessing donor organs while the poor are marginalized. This situation violates the principle of justice and threatens the integrity of the entire healthcare system.

Governments and medical institutions are responsible for ensuring the organ distribution process through objective and transparent mechanisms. It is vital to establish independent bodies or ethics committees to oversee and routinely evaluate the selection process for organ recipients. Additionally, integrating a national waiting list with medical data will make the selection process measurable and auditable. By prioritizing justice as the foundational principle in organ distribution, the state can foster an ethical and trustworthy transplant system that upholds the human rights of all its citizens.

Beyond distributive and procedural justice, corrective justice must also be considered in organ donation. Corrective justice relates to restitution or compensation for harm suffered. In this context, if a donor experiences adverse health effects, the state and medical institutions have a moral and legal obligation to provide appropriate remedies—such as ongoing healthcare services, psychological support, or social incentives. This principle must be systematically incorporated into national transplant policies to ensure that donors—especially those from vulnerable or low-income groups—are not exploited. The state must also guarantee that the donation process is voluntary, without economic or social coercion.

In addition to justice, organ donation must also adhere to ethical principles. Although medically, organ transplantation offers extended life expectancy and better quality of life for patients; the donation process must be carried out within a strict ethical framework to safeguard the dignity and human rights of both donors and recipients. Three core ethical principles must be considered in organ donation: Respect for Autonomy, Non-Maleficence, and Beneficence (Lee, 2018). Respecting autonomy signifies that organ donation is a noble act, and everyone has the right to make decisions that are free, informed, and devoid of coercion. Consequently, obtaining informed and voluntary consent from donors is essential, based on comprehensive information regarding the donation's risks, benefits, and implications. Ethics committees within hospitals or transplant institutions must ensure that informed consent is acquired correctly and that no exploitation elements are involved.

The principle of non-maleficence, or "no harm," is also highly relevant. Although organ donation can save another person's life, doctors and healthcare institutions remain obligated to minimize the risks to the donor. This includes thorough medical and psychological evaluations prior to the procedure and post-donation monitoring to ensure safety and well-being. The principle of beneficence, or "doing good," requires that organ donation must clearly and significantly benefit the recipient without compromising the rights or well-being of the donor. Transplants must not be carried out solely based on economic necessity or emotional pressure from others.

Upholding these three ethical principles forms a fundamental foundation to ensure organ donation practices are dignified, fair, and aligned with universal human values. These ethical principles, supported by the principle of justice, serve as a moral compass in navigating organ transplantation's medical, social, and legal complexities. By adhering to these principles, organ donation can reflect justice and human dignity and strengthen public trust in an ethical and humane healthcare system.

* 1. Comparative Analysis: Legal Protection for Organ Donors Abroad

Organ donation practices have become a vital component of healthcare systems in many countries. However, legal protection for organ donors varies significantly depending on each nation's legal framework, cultural values, and social structures. In this context, a comparative study of countries like Iran, Chili, and Singapore offers valuable insights into how legal protections for donors can be designed to be fair, ethical, and dignified. Iran is one of the few countries with a unique and well-structured kidney donation system. Known as The Iranian Model of Transplantation, this approach aims to address the shortage of kidney donors while avoiding unethical practices such as organ trafficking or exploitation of vulnerable populations. This model combines strict regulation with a controlled compensation scheme and upholds the principles of justice and transparency.

The donation process begins with an evaluation of the recipient. If no suitable donor is found among family or acquaintances, the patient is referred to the Iranian Patients Kidney Foundation (IPKF), an organization responsible for matching donors with recipients. IPKF plays a crucial role in eliminating illegal intermediaries and ensuring that the selection process is fair and non-discriminatory, regardless of the recipient's socioeconomic status, instilling confidence in the system's fairness. Potential donors aged 18 and 45 can register with IPKF to donate a kidney. Both donors and recipients undergo comprehensive health screenings. The donor and recipient meet to discuss compensation if a match is found (Mahdavi-Mazdeh, 2012). These discussions are conducted privately, and while IPKF facilitates the space for negotiation, it does not interfere with or influence the terms of compensation, ensuring a fair and ethical process. IPKF will match the recipient with another donor if no agreement is reached. The state does not determine the amount of compensation, but IPKF oversees the process to prevent coercion or excessive payments. Agreements are confidential, and the transplant procedure is carried out at a university hospital with all medical costs covered by the Ministry of Health and national health insurance, providing financial reassurance to both the donor and the recipient.

After the surgery, the donor is entitled to receive compensation from the government through the Charity Foundation for Special Diseases (CFSD). This compensation includes an altruistic gift of 10 million Iranian rials (approximately USD 250 or IDR 3 million), one-year health insurance, and exemption from military service. The CFSD plays a crucial role in ensuring that the donor is adequately compensated for their altruistic act, a key aspect of the Iranian kidney donation model (Ghahramani, 2016). In the case of deceased donors, the government does not compensate the family. This may raise ethical concerns, but it is important to note that the deceased donor's family may express appreciation through other means. Suppose the deceased donor did not give explicit consent before death. In that case, Islamic law requires the transplant team to compensate the donor's family in *diyat* (restitution), ensuring that the family is not left without support or recognition (Tober, 2007).

Iran's kidney donation model is regarded as a balanced approach between medical necessity, donor rights protection, and humanitarian values. It is an important case study for other countries seeking to develop ethical and practical organ donation policies. By offering clear legal support and regulated compensation, Iran has created a system that upholds human dignity and autonomy while responding to urgent medical needs humanely and structured.

Chile, a middle-income country, is another nation that applies the principle of reciprocity as a condition in its organ transplantation system. In recent years, Chile has adopted legal reforms combining an opt-out system with priority incentives in organ allocation (Zúñiga-Fajuri, 2015). Although these reforms have not achieved their goals yet, the approach presents an interesting model for other countries facing severe organ shortages. The opt-out system, which considers every individual a potential donor unless they explicitly state otherwise, has proven to be an effective strategy in increasing donor numbers. By combining this system with prioritizing registered donors for organ allocation, countries like Singapore have seen a significant increase in public participation in organ donation.

In 2013, Chile updated its Organ Donor Law to incorporate these provisions. The law not only reinforces the explicit opt-out system but also introduces a priority allocation incentive, giving preference to individuals who have declared willingness to be donors. If more than one patient is eligible for an organ, those who are registered donors are prioritized. Although the system is intended to promote solidarity and reduce purely self-interested behavior, ethical debates persist. Some argue that such incentives, particularly if not driven by pure altruism, may undermine the spirit of solidarity. However, as argued by Kolber, priority incentives do not diminish altruistic values but rather expand opportunities for altruistic action by guaranteeing a higher chance of receiving an organ in the future (Kolber, 2003). Countries that implement opt-out systems—such as Austria, Belgium, France, and Norway—report 25–30% higher organ donation rates than those with opt-in systems. Other factors also play a role, including medical infrastructure, healthcare spending, public attitudes, and family consent (Abadie & Gay, 2006).

In Chile, organ allocation is managed nationally and treated as a public good. However, unlike universal access approaches, Chile stipulates that only individuals participating in the donor system benefit from priority. This approach is intended to create more substantial incentives for public participation in donor programs while strengthening social solidarity within the community.

In addition to Iran and Chile, Singapore is another country that implements a priority rule approach in its organ transplantation system. In 1987, Singapore enacted the Human Organ Transplant Act, establishing an opt-out system with a priority allocation principle (Iyer, 1987). Under this system, individuals who refuse to become organ donors after death forfeit their priority right to receive an organ should they ever need one. This approach provides a dual incentive for the public: to avoid the consequences of opting out of the system and to gain privileged status on the organ transplant waiting list.

The primary objective of implementing this system is to increase public participation in organ donation programs, especially amid limited organ supplies. However, concerns arise that if organ supply becomes sufficient due to the opt-out system, the priority rule might no longer be effective in deterring "free rider" behavior—those who wish to receive organs but are unwilling to donate. Nevertheless, combining the opt-out system and the priority principle in Singapore has proven quite successful in boosting donation rates from living and deceased donors (Chandler, 2005). The priority principle acts as a moral signal and strong incentive for the public: refusing to be a donor directly reduces one's chance of receiving an organ in the future. This is viewed as a form of reciprocal justice, emphasizing that anyone who wishes to benefit from the organ transplantation system must also be willing to contribute.

The increase in donor numbers in Singapore following the implementation of this system indicates that the policy is effective in raising public awareness. Although the impact of the priority rule cannot be entirely separated from the overall effect of the opt-out system, initial results show a positive trend. Pragmatically, the public has begun to understand that the willingness to donate is part of community members' moral and social responsibility.

Furthermore, this legal system provides a transparent and fair allocation process, as priority status is determined by an individual's contribution to the system. In other words, those who declare their willingness to donate are prioritized as recipients when organs become available. This principle is grounded in efficiency considerations and the value of distributive justice—those scarce resources, such as organs for transplantation, should be given to those who are also willing to give (Vanholder et al., 2021). This concept has also gained moral support from the broader public, who believe it is unfair for someone to receive an organ while refusing to become a donor. Therefore, the willingness to donate in return for organ eligibility is regarded as a reasonable moral condition within a fair and sustainable organ transplantation system.

These three countries offer different approaches to providing legal protection for organ donors, reflecting their respective cultural contexts, legal systems, and social structures. Iran emphasizes legal certainty and the provision of material incentives for living donors within a highly structured system closely monitored by the state. Conversely, Chile encourages voluntary participation by offering organ recipient priority, highlighting the values of solidarity and reciprocal justice. Meanwhile, Singapore prioritizes efficiency and distributive justice through clear and firm regulations regarding society's rights and moral responsibilities regarding organ donation. All three demonstrate that legal protection for donors is not merely a technical or medical issue but reflects more profound legal philosophies—justice, social solidarity, and respect for individual autonomy.

The ideal organ transplantation model for Indonesia would be a combination of Singapore and Chile's progressive opt-out systems, Iran's structured compensation and strict oversight, and the support of a transparent and accountable national institution. This model must uphold ethical principles, social justice, respect for donors, and legal protection while remaining aligned with Indonesia's cultural and religious values.

1. CONCLUSION

Legal protection for organ donors in Indonesia is essential for establishing a fair, ethical, and human rights-respecting organ transplantation system. Despite regulations such as Law No. 17 of 2023 on Health, Government Regulation No. 28 of 2024, and Ministry of Health Regulation No. 38 of 2016, their practical implementation faces significant challenges. These challenges include a lack of incentives and ambiguous legal mechanisms to protect the rights of both living and deceased donors. From a justice perspective, it is essential to recognize donors as legal subjects whose rights must be comprehensively protected—medically, legally, and ethically. To accomplish this, a reciprocal justice approach should be embraced. This framework ensures that altruistic acts, such as organ donation, are not exploited but are afforded equal respect and protection. Therefore, reformulating legal policies is necessary to strengthen principles of transparency, accountability, and legal certainty within the transplant system. The government must establish clearer regulations, implement continuous oversight, and, most importantly, provide public education. This education is crucial in raising awareness about the rights and obligations involved in organ donation. With comprehensive legal protection, Indonesia's transplant system can evolve to become both medically efficient, legally fair, and socially humane, thereby enhancing public trust and upholding fundamental human values.

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The authors declare that this work is free from any conflicts of interest.

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