

CERTIFICATION OF PERUM PERHUTANI FOREST AREA OF SURAKARTA FOREST UNIT BY THE COMMUNITY (A CASE STUDY OF THE SUPREME COURT DECISION NUMBER 617 K / TUN / 2015)

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ABSTRACT

The state's right to control over lands also includes the control of forests. Perhutani as a forest stakeholder has authority in the management. In the management process, there are many problems. Forest area conflict is a very complex separate problem faced by Perum Perhutani in carrying out the task of managing forest areas. The method used in writing this thesis was a normative juridical approach. The research specification was descriptive analytical. The sources of data used were the primary data obtained by interview and the secondary data in the form of primary, secondary and tertiary legal materials. This study used qualitative research method. Based on the discussion of the problems under the study, the results of the research are as follows: 1) this affirmation activity was carried out so that there is no recognition of land rights from other parties related to forest areas. 2) a land with *eigendom* rights or the *erfpachtas* rights as well as free state land was used as the basis for an ownership certificate of forest areas, 3) the Agrarian and Spatial Planning Office / National Land Agency of Klaten Regency cancelled the issued certificate in accordance with the decision of the Supreme Court Number 617 K / TUN / 2015 through the procedure of the Minister of Agrarian Affairs / Head of the National Land Agency Number 3 of 1999 concerning Delegation of Authority to Grant and Cancellation of Decisions on Granting Rights to State Land and Agrarian Regulation / Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Cancellation of the Rights to State Land and Rights to Management.

Keywords: Certification, forest area, community

A. INTRODUCTION

One of the determinants of life support systems, forests have provided great benefits to mankind, therefore their sustainability must be preserved. Forests have a role to harmonize and balance the global environment, namely as the lungs of the world, where the balance of forests in an area alone can have major implications at the world level.¹

Forests are not only a buffer for the world's ecology but also as a buffer for the economy of the people or local people, where the forest is located. This means that in addition to inherent ecological functions, forests also have an economic function. The regulation of the economic function of Indonesian forests is covered by constitutional provisions, namely Article 33 of the 1945 Constitution, which states that the land, water and natural resources in which forests, including the natural resources therein, are controlled by the state and are intended for the maximum welfare of the people. This means that the biological wealth that exists in Indonesian nature is one of the natural resources that must be able to provide benefits to all levels of Indonesian society without exception.

According to Boedi Harsono, in Law Number 5 of 1960 concerning Basic Agrarian Principles or abbreviated as UUPA, what is meant by agraria has a very broad meaning, which includes the earth, water and natural resources in it. Based on the broad meaning of agrarian as mentioned above, agrarian law in the LoGA is a group of various fields of law, each of which regulates control rights over certain natural resources.²

The state's right to control over the land also includes control over the forest. Perhutani as forest holder has authority in management. In the management process, there are many problems. Forest area conflict is a very complex separate problem faced by Perum Perhutani in carrying out the task of managing forest areas. Various forms of conflict can be found in forest management practices, such as unilateral claims against forest areas identified by other parties (agencies, legal entities, or communities) as land ex-western rights such as *eigendom* and / or rights *erfpacht*, or considered as land that was formerly customary rights, or considered as "free state land" which could then be encroached, occupied, cultivated, and rights to the land were requested (certified).

This conflict sometimes by Perhutani dealing with cases involving many communities and even the potential to be turned into politics. The problems of conflict and forest land disputes with the community are not only faced by companies holding forest utilization permits with the community but also faced by State-Owned Enterprises (BUMN) Perum Perhutani. This is because the characteristics of forests, which are very valuable resources, result in access to and control over Forest Resources (SDH) which always invites problems. Especially the issue of disputes regarding control / ownership of forest land between the government (state) and the community in general and customary law communities in particular.

The problem regarding this dispute has existed for decades, but tends to increase from time to time and finally the escalation is getting higher with the rolling of the reform era with its various excesses. In fact, it is found that ownership of land above the State Land Area has received a certificate directly from the Head of the local Land Office.

Boedi Harsono said that the certificate as a proof of title, issued for the benefit of the right holder concerned, is in accordance with the physical data contained in the measurement letter and the juridical data that has been registered in the land book.³ The issuance of land rights certificates is a manifestation of one of the main objectives of the LoGA, namely to provide legal certainty regarding land rights for all Indonesian people.

¹ As. Zain, 1996, *Hukum Lingkungan Konservasi Hutan*, Penerbit Rineka Cipta, Jakarta, p. 9.

² Boedi Harsono, 2008, *Hukum Agraria Indonesia, Sejarah Pembentukan UUPA, Isi dan Pelaksanaan*, Djambatan, Jakarta, p. 545.

³ Boedi Harsono, *Op. Cit.*, p. 500.

In fact, there is still an overlap in the State Forest area. In fact, Presidential Regulation No. 24/1997 on land registration adopts a negative publication system that contains a positive element, because it will produce letters of proof of rights that act as a strong means of proof.⁴ So that the physical data and juridical data contained in the certificate have legal force and must be accepted by the judge as true information as long as and as long as there is no other evidence that proves otherwise.⁵

The above regulation is not effective with its implementation in the field, where currently there are many land title certificates in forest areas in various regions in Indonesia, which results in the cancellation of all land title certificates. If the government is going to cancel all land rights certificates in forest areas, then the government should first look at the procedures for obtaining the certificate holder, so as not to cause conflict between the government and the certificate holder, even though the certificates issued in forest areas can result in the cancellation of the certificate issuance decision. rights to the land.

One example is in the Decision Number 050 / G / 2014 / PTUN.SMG between the State Forestry Public Company (PERUM), State-Owned Enterprises (BUMN) as the plaintiff and the Head of the Land Office of Klaten Regency as the defendant and the community who have been recorded on the title certificate. belonged as defendant II intervention. This problem started when the defendant had issued ownership certificates to 17 people above the state forest area, hereinafter referred to as the object of shock. The plaintiff felt aggrieved after the issuance of these ownership rights certificates because the plaintiff controlled and managed forest land on a legal basis. The object of the dispute was originally a "magersaren" forest area, that is, there used to be a location in a certain forest area that was used to accommodate the community but now it has become a settlement because its inhabitants are growing.

The Defendant himself issued ownership rights certificates for the object of the dispute only to 17 (seventeen) people while the majority of the people in the settlement area stated that the land was a state forest area. Basically, in a forest area a certificate cannot be issued, even though physically in the field has been a residential area. The action of the defendant also violated the Regulation of the State Minister for Agrarian Affairs / Head of the National Land Agency Number 3 of 1997 concerning Provisions for Implementing Government Regulation Number 24 of 1997 concerning Land Registration which states that the determination of boundaries is carried out after written notification to the applicant for measurement and to the holder of the rights to the area that is bordering. This violation was proven by the plaintiff, as the forest manager, who was not involved in the ongoing measurement process and a thorough investigation of the history of the land parcels was not carried out, because in fact the land had the status of a State Forest Zone.

B. PROBLEMS FORMULATION

Based on the background that has been stated above, this research is limited to the following problems:

1. How is forest area certification confirmed by the State?
2. What factors cause the community to apply for forest area land certification?
3. What is the responsibility of the National Land Agency for cancellation of the certificate?

C. LITERATURE REVIEW

a. Land and Land Perhutani

Land is the surface of the earth or the layer of the earth that is on top of once.⁶ Land in the legal sense has a very important role in human life because it can determine the existence and continuity of legal relationships and actions, both in terms of individuals and impacts on others.

UUPA, especially Article 4 paragraph (1) was formed as one of the implementations of Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia (hereinafter referred to as the 1945 Constitution), which emphasizes that "Earth and water and natural resources contained therein is controlled by the state and used for the greatest prosperity of the people. "Therefore, the determination and distribution of land rights must be used for the greatest welfare of the people.

Based on Article 4 paragraph (1) of the UUPA above, what is meant by land is the surface of the earth. This article authorizes the use of the land in question as well as the body of the earth and water and the space thereon, only necessary for interests directly related to the use of the land within the boundaries according to this law and other higher legal regulations.

Perum Perhutani is a state-owned company in Indonesia which has the task and authority to carry out planning, management, exploitation and protection of forests in its working area. As a state-owned company, Perum Perhutani strives for services for the public benefit and at the same time generates profits based on the principles of company management.⁷

b. Land Rights The

Definition of land rights is the right that gives authority to a person who has the right to use or benefit from the land. Land rights are different from land use rights.⁸ A distinctive feature of land rights is that a person who has rights to land is authorized to use or benefit from the land to which he is entitled.

In juridical terms, the definition of land is explained in article 1 paragraph (4) of the UUPA, which reads as follows: "In the sense of the earth, besides the surface of the earth, this includes the body of the earth underneath and is under water". In the explanation of Article 1 paragraph (4) of the UUPA above, it is stated that what is meant by land is the surface of the land is the

⁴ Boedi Harsono, *Op.Cit.*, p. 477

⁵ Urip Santoso, 2010, *Pendaftaran Dan Peralihan Hak Atas Tanah*, Cetakan 2, Kencana, Jakarta, p. 45.

⁶ Pusat Bahasa Departemen Pendidikan Nasional, 2008, *Kamus Besar Bahasa Indonesia*, Jakarta, p. 1433

⁷ <https://id.wikipedia.org/wiki/Perhutani>, accessed on 16 July 2017

⁸ Sri Sayekti, 2000, *Hukum Agraria Nasional*. Lampung University. Bandar.Lampung.p. 20

surface of the earth. So here is differentiated regarding the meaning of earth and land. The definition of land according to geography is the layer of the earth's surface that humans can use for.

The right to land is the right to a certain part of the earth's surface which has borders, therefore the right to land not only gives the authority to use a certain part of the earth's surface which is called land, but also part of the body of the earth under it and the water and space above it with restrictions. However, the body of the earth under the ground and space that is above it, is not an object of land rights, not an object that belongs to the holder of land rights. Right to land in effect in Indonesia today is one of the things regulated in Agrarian Law and based on the existence of customary law.

c. Forest Area Confirmation

According to Dengler, what is meant by forest is a number of trees that grow in a large enough field, so that temperature, humidity, light, wind, and so on no longer determine the environment, but are influenced by new plants / trees as long as they grow in place, which is quite wide and the plants are quite tight (*horizontal and vertical*).⁹

The definition of forest according to Law of the Republic of Indonesia Number 41 Year 1999 is an integrated ecosystem in the form of a stretch of land containing biological natural resources which is dominated by trees in natural communities whose environment cannot be separated from one another, while Forestry is a management system that is related to the forestry area of the forest, and forest products which are managed in an integrated manner.

D. RESEARCH RESULTS AND DISCUSSION

a. Confirmation of Forest Area Certification by the State

Proposing and Designation of Conservation Forest in Indonesia is carried out through a series of processes called forest area affirmation. The Conservation Area itself includes Nature Conservation Areas (National Parks, Nature Tourism Parks, Grand Forest Parks), Nature Reserves (Nature Reserves, Wildlife Reserves) and Buru Parks. Confirmation of forest areas is a series of activities to designate, delineate and determine forest areas. The appointment and determination of this conservation forest area is the authority of the Minister of Forestry as outlined in the Decree (SK) of the Minister of Forestry.

According to Article 15 of Government Regulation Number 44 of 2004 concerning Forestry Planning, it is stated that the affirmation of Forest Areas is a series of activities to designate boundaries, map and determine forest areas with the aim of providing law on the status, function of boundaries and area of forest areas.

Confirmation of the legal status of forest areas is carried out by affirming forest areas as regulated in Law Number. 41 of 1999 concerning Forestry, particularly in Articles 14 and 15 which states:

Article 14

- (1) Based on the forest inventory as referred to in Article 13, the Government shall establish forest area gazettelement.
- (2) Forest area affirmation activities as referred to in paragraph (1) are carried out to provide legal certainty over forest areas.

Article 15

- (1) Confirmation of forest areas as referred to in Article 14 is carried out through the following processes:
 - (a) Designation of forest areas,
 - (b) Delimitation of forest areas,
 - (c) Mapping of forest areas, and
 - (d) Determination of forest areas.
- (2) Confirmation of the forest area as referred to in paragraph (1) shall be carried out by taking into account the regional spatial plan.

Forest gazettelement activities are very important activities in the forestry sector. This activity is the basis for determining the legal status of a forest, whether it is protected forest, production forest, nature reserve forest, or tourism forest.

Based on interviews, the gazettelement of forest areas requires attention regarding legal certainty, especially from the government. Forest affirmation is an activity related to the demarcation of an area that has been designated as a forest area in order to obtain legal certainty regarding the status and boundaries of forest areas.

The status of BUMN in the form of a Perum to become a legal entity after the promulgation of government regulations regarding its establishment and management based on company principles shows that BUMN in the form of a Perum is a company that is a private legal entity even though the Perum organ contains elements of public officials, namely the Minister of BUMN and company assets are state assets.

Based on the provisions of Article 3 paragraph (1) Government Regulation (PP) Number 72 of 2010 concerning State Forestry Public Companies (Perum), which states "With this Government Regulation, the Government will continue to assign companies to carry out Forest Management in State Forests in the Province. Central Java, East Java Province, West Java Province, and Banten Province, except for conservation forests, based on the principles of sustainable forest management and the principles of good corporate governance, furthermore the provisions of Article 3 paragraph (4) state Forest Management in State Forests by Companies as intended. in paragraph (1) does not include activities that are under public authority, which at least include:

⁹ Agus Salim. 2002. *Perubahan Sosial*. PT Tiara Wacana. Yogyakarta, p. 34.

- a. Designation and designation of forest areas;
- b. Forest area affirmation;
- c. Borrowing and using forest areas;
- d. Swapping forest areas;
- e. Change in the status and function of forest areas;
- f. Granting forest utilization permits to third parties for Forest Management in the Company's working area; and
- g. Activities related to Forestry Civil Servant Investigators;

In order to provide a legal position as a strong means of proof and to guarantee legal certainty for certificate holders, preventive measures are taken before issuing certificates to prevent overlapping interests.

Due to the high value and benefits of land, many people seek to obtain evidence of land ownership illegally and in violation of the law, including having proof of ownership of land within a protected forest area.

Forest area is an area that must be protected and must be freed from the existing rights (Hak Milik, Hak Guna Bangunan, Hak Guna Usaha, Hak Pakai) because it will have a negative impact on the forest area itself.

For this reason, the author is of the opinion that the issuance of certificates in forest areas should not be carried out by the National Land Agency, because it will not provide a legal position as a strong evidence tool to guarantee legal certainty for the holder. This problem is evidence of the lack of coordination between the Ministry of Forestry and the National Land Agency, which is a vertical agency.

The National Land Agency (BPN) feels that the land title certificates it has issued are in accordance with existing procedures, but many certificates should not be issued in certain areas such as forest areas.

Prior to the designation of forest areas, the government (in this case: The Ministry of Forestry) first carries out an inventory of the rights of third parties in the forest area by the Forest Area Boundary Committee, which aims to collect the lands owned by the community in the area. The legal status of the forest will be determined and provide a settlement so that in the forest area there is no proof of land ownership so that in the forest area there is no longer any basis for rights found.

b. Factors Causing Communities to Apply for Land Certification of Forest Areas

Disputes are a social reality that can occur anytime and anywhere, as a social reality, disputes must be managed and solutions must be found so that they do not become anarchic.

There are 2 (two) types of land disputes that occur in Indonesia, namely a horizontal one and a vertical one. Horizontal disputes are shown in disputes that occur between community members, whereas vertical disputes occur between people against the power of capital and / or with the state, including in this case State-Owned Enterprises (BUMN). The emergence of land disputes cannot be separated from the importance of land tenure for a person or group of people, who independently or defend their land rights.

In relation to the issues underlying the emergence of various land dispute cases are very diverse. This is closely related to the social, economic and cultural conditions of the community in which the case occurred. Communities can apply for forest land certification because of differences in maps owned by each party, namely Perhutani and BPN. Forest area is a certain area determined by the government to be maintained as permanent forest. The existence of disputes can also occur because of the conditions that were not met before the issuance of the certificate.

Parties involved in the issuance of certificates must be involved in the measurement process so that proof of boundary marks can be clearly identified. The government undertakes the settlement of land tenure in forest areas controlled and utilized by parties. Judging from the legal relations between the two disputing parties, basically the land dispute case arises as a result of (1) ownership status dispute, (2) tenure status dispute, (3) usage status dispute, and (4) dispute over due to the inadequacy of land acquisition compensation.¹⁰

It is referred to as a dispute over ownership status, if both parties to the dispute feel entitled to the disputed plot of land, whether it is proven by legal documents or not. A case that is caused by a dispute over tenure status, when both parties generally know who the owner is and who controls it, it is a matter of whether one party wants to control the land. A case that is caused by a dispute over the status of use, the basis for the dispute is that the ruler / owner does not approve of his land being used for certain interests. The case that was caused by a dispute over compensation for land acquisition which became a problem was the mismatch in the provision of compensation to the party whose land was acquired.¹¹

c. The Responsibility of the National Land Agency (BPN) for Cancellation of the Certificate

Along with the high value and benefits of land, many people try to obtain proof of land ownership illegally and violating the law which results in the cancellation of the proof of ownership. Basically, cancellation is an act that aims to break, terminate or eliminate a legal relationship.¹²

Cancellation of land title certificates is a form of land rights dispute resolution caused by a decision to grant rights and / or land title certificates which are decisions issued by the Head of the Land Office which contain administrative legal defects or carry out a court decision that has permanent legal force.

Unclear evidence of land tenure and no documentation will result in clashes between parties over land rights. Seeing the many problems that occur regarding proof of land ownership in the form of certificates in forest areas, the government should make a regulation (rule) that specifically regulates the cancellation of certificates in forest areas so that certificates are no longer found in forest areas.

¹⁰ Bambang Eko Supriadi, Op. Cit., p. 129-130

¹¹ Endang Suhendar, *Pemetaan Pola-Pola Sengketa Tanah di Jawa Barat*, Akatiga, Bandung, 1994, pp. 31-32, 38

¹² Rusmadi Murod, *Penyelesaian Sengketa Hukum Atas Tanah*, Cetakan I, Bandung: Alumni, 1991, p. 28

Basically, the process of certificate cancellation in forest areas is the same as the certificate cancellation process in general, but the difference is that the National Land Agency (BPN) must pay attention to regulations governing forestry.

If you look at the aspect of the guarantee provided by providing a certificate of land title (title to land), as a means of proof, then in land registration there are 2 (two) types of systems, namely: Negative System and Positive System.¹³

The publication system adopted by Indonesia is different from other countries and the known publication system. According to Arie S. Hutagalung, the LoGA uses a mixed system, namely a negative publication system but given positive characteristics. This can be seen from Article 19 paragraph (2) of the UUPA which states that "registration includes the provision of a certificate of proof of rights, which acts as strong evidence".¹⁴

Although the certificate has been guaranteed to be a positive publication system, if the provisions in Article 32 paragraph (2) include: First, the Certificate is issued legally, Second, Land is obtained in good faith, Third, Land is controlled in real time, Fourth, Within five years since the issuance of the certificate, no one has submitted a written objection to the certificate holder and the Head of the Regency / City Land Office does not file a lawsuit to the court regarding land control or certificate issuance, is¹⁵ not fulfilled in the issuance of the certificate, then the certificate may be revoked and / or prosecuted despite the age more than 5 years certificate.

Responsibility will be given to the National Land Agency if the land title certificate is in accordance with the physical data and juridical data contained in the land book and meets the elements or requirements to become a legal decision. In addition, the responsibility for the position of BPN organs is only administratively not giving compensation to the certificate holder because the National Land Agency does not have such a responsibility.¹⁶

The administrative responsibility referred to is that the National Land Agency will review the certificate and / or re-examine the physical data and juridical data in the certificate. If in the research it is proven that the certificate issued by the object is in a forest area, then the decision is categorized as maladministration, so that BPN will make repairs and / or cancellation of the certificate on the basis of administrative defects and / or interested parties submit an application to BPN or file a lawsuit. to court.¹⁷

In addition, as a form of administrative responsibility for National Land Agency employees who are proven to have issued a decision to issue certificates in forest areas, it is appropriate to be subject to sanctions in the form of warnings to disrespectful dismissal while still referring to internal institutional regulations. With the administrative responsibility in the form of dismissal, it is hoped that there will be no more issuance of certificates in areas that cannot be issued based on any rights over them.

BPN is the agency that is responsible for the cancellation of the certificate by the PTUN due to an error or negligence in the certificate issuance process. By looking at the duties and responsibilities of BPN, it is very clear that BPN is not only responsible until there are people who make administrative efforts, but BPN is given the burden to carry out the PTUN decisions related to its main task, namely issuing certificates.

In this regard, the certificate that has been canceled by the PTUN which has legal force must be followed up in terms of revoking or canceling the certificate. The responsibility of BPN does not end there, also if a BPN member who deliberately or negligently causes losses to other people due to errors in issuing certificates to him is given the responsibility to compensate for losses and even possibly pay for the loss of profit expected.

E. CLOSING

a. Conclusion

- i. The process of forest gazettement is regulated in Article 15 of Republic of Indonesia Law Number 41 of 1999 concerning Forestry and Minister of Forestry Regulation Number P.50 / MENHUT-11/2011 concerning Forest Confirmation. Confirmation of forest area is a series of activities to designate, delineate and determine forest area. This inauguration activity is carried out so that there is no recognition of rights from other parties related to forest areas. Legal certainty and the recognition of the parties to the forest area are generated through the process of gazettement of forest areas starting with designation, demarcation, mapping and ending with stipulation. This is a government policy in realizing legal certainty and recognition of a forest area.
- ii. The factors that cause the community to apply for forest area land certification, a land with eigendom rights or rights *erfpacht* to become forest areas, there are several possibilities as follows: the
 - 1) right has been declared null and void by the government; or their
 - 2) rights are stripped / relinquished by the owner; without compensation or by giving compensation; or their
 - 3) rights are transferred, sold or exchanged;
 - 4) because the right is abolished, the forest area can be turned into land on the basis of rights can be done through the following process: according to the Regulation of the Minister of Environment and Forestry of the Republic of Indonesia Number P.17 / MenLHK / Setjen / Kum.1 / 5/2018 concerning Procedures for the Release of Forest Areas and Changes in Forest Area Boundaries for Land Resources for Agrarian Reform Objects and by the process of exchanging forest areas in accordance with Government Regulation Number 10 of 2010 concerning Procedures for Changing the Designation and Function of Forest Areas.
- iii. Personal responsibility occurs when government officials or organs in carrying out legal actions do not comply with their authority or in other words personal responsibility related to the deviant behavior of government officials against the laws

¹³ Ali Achmad Chomzah, *Hukum Agraria (Pertanahan Indonesia)*, Jilid 2, Jakarta, Prestasi Pustakarya, 2004, p. 15

¹⁴ Arie S. Hutagalung, *Tebaran Pemikiran Seputar Masalah Hukum Tanah*, Jakarta: Lembaga Pemberdayaan Hukum Indonesia, 2005, p. 88

¹⁵ Urip Santoso, *Hukum Agraria: Kajian Komprehensif*, Jakarta: Kencana, 2012, p. 319

¹⁶ Interview with the Head of the Section for the Assessment and Handling of Land Cases at the Klaten Regency Land Agency, on August 7, 2018

¹⁷ Interview with the Head of the Section for the Assessment and Handling of Land Cases at the Klaten Regency Land Agency, on August 7, 2018

and regulations and the General Principles of Good Governance. Furthermore, in the responsibility of the position of government organs or officials relating to the legality or legality of government actions. The scope of legality of government action includes: authority, procedure, substance.

The Agrarian and Spatial Planning Office / National Land Agency of Klaten Regency to cancel the issued certificate in accordance with the decision of the Supreme Court through the procedure of Agrarian Regulation Number 3 of 1999 concerning Delegation of Authority to Grant and Cancellation of Decisions on Granting Rights to State Land and Agrarian Regulation / Head of the Land Agency National Number 9 concerning Procedures for Granting and Cancellation of Rights to State Land and Management Rights.

b. Suggestion

- i. There needs to be a good and strong commitment from the stakeholders, to carry out the control and management of forest area land as mandated by the Forestry Law.
- ii. Perum Perhutani KPH Surakarta further enhances the approach to village communities around the *sense of belonging and* a sense of caring about the preservation of forest resources and socializing forest areas to all *stakeholders*. There is also a need for harmonization of laws and regulations in the agrarian sector.
- iii. The Collaborative Forest Management System (PHBM) must be truly lived and inspired by exercising each other's rights and obligations so that the results of this program in the future will be better. The role of community participation in all forest management activities through the PHBM system is further enhanced.

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