

Juridical Implications of Bankruptcy on Debtor's Property as a Business Entity CV

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ABSTRACT

Bankruptcy has a big impact on people's lives. One of them is the impact on the debtor's property. All objects belonging to the debtor are in general confiscation and the control and settlement cannot be carried out by the debtor but in the hands of the curator. The debtor in this case is the debtor who is a business entity in the form of Commanditaire Vennootschap (CV). This study aims to determine and analyze the juridical implications of debtors' property and legal protection for creditors holding property guarantees in the event of bankruptcy. The research method used is juridical normative by examining legal principles, legal regulations as well as various concepts and theories related to the juridical implications of bankruptcy on debtors' property. The results showed that since the bankruptcy verdict was pronounced by the court, the debtor's assets were in general confiscation as bankruptcy assets. Such objects can no longer be controlled and managed by the bankrupt debtor but are in the hands of the curator under the supervision of the Supervisory Judge. Objects that are the object of material collateral should be executed directly by the creditors, because of the separatist creditor position. The fact shows that the rights of separatist creditors are limited by the automatic stay of 90 days and the sale period of only 2 months. There are arrangements that are not synchronous between legislation and between articles in the same regulation.

Keywords: Bankruptcy, Separatist Creditors, Debtors, Commanditaire Vennootschap

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INTRODUCTION

Bankruptcy is a problem that often arises in various countries, including the United States, India, and Indonesia (Brédart, 2014; Kumar & Kumar, 2012). The word bankrupt comes from the French "faillite" which means payment congestion. In Dutch the term *failliet* is used. In Anglo America law it is known as the Bankruptcy Act (Hartini, 2017). Bankruptcy according to Article 1 number 1 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU) is "general confiscation of all assets of the Bankrupt Debtor whose management and / or settlement is carried out by the curator under the supervision of the Supervisory Judge." The court that has the authority to deal with bankruptcy issues in Article 1 point 7 is the Commercial Court within the general court. The basic philosophy of regulating bankruptcy issues in the context of Indonesian law is an embodiment of Article 1131 and Article 1132 of the Civil Code. Article 1131 of the Civil Code states that "All objects of the indebted party, both movable and immovable, both existing and new ones will exist at a later date, will be borne by all individual engagements." Implicitly Article 1131 describes the principles of schuld and Haftung. Schuld is what the debtor owes to the creditor. Haftung is the debtor's assets that are responsible for paying off debtor's debt. This means that in principle the debtor's debt must be paid, and if it is needed as the debtor's accountability, the debtor's property is sold and used to pay off the debtor's debt to the creditor. In this case the position of creditors is the same (principle of parity creditorium), unless there is a valid reason to prioritize one receivable over another as stipulated in Article 1132 of the Civil Code. In the Black's Law Dictionary, it is stated that a Bankrupt is (Black et al., 1999):

"Indebted beyond the means of payment; insolvent. A person who can not meet current financial obligations; an insolvent person. Bankruptcy is a

statutory procedure by which a debtor obtains financial relief and undergoes a judicially supervised reorganization or liquidation of the debtor's assets for the benefit of creditors."

From the above definition, it can be seen that bankruptcy is related to the inability of people (individuals or business entities) to pay their debts that are due. This inability must be accompanied by a concrete action to file an application for a bankruptcy statement to the court, either voluntarily by the debtor or at the request of another party. From the definition of bankruptcy in the Bankruptcy Law and Postponement of Debt Payment Obligations, the scope of bankruptcy is not only related to general confiscation but also includes several other regulations such as rehabilitation and legal conditions of debtors after settlement of settlement (Nola, 2017).

Bankruptcy has a very significant impact on people's lives (Ramakrishnana et al., 2015). This was also stated by Joseph (2019), so that bankruptcy predictions are needed for companies to anticipate the possibility of bankruptcy early. The debtor's bankruptcy has various legal consequences, one of which is the debtor's property. Article 499 of the Civil Code states that "Objects are all goods and rights that can be objects of property rights (eigendom)", all assets belonging to the debtor fall into bankruptcy and the management is carried out by the curator (Badriyah et al., 2018).

Debtors who experience bankruptcy can be individuals or a business entity, one of which is CV. CV is a business entity that is not a legal entity which is widely used by the public. From data from the Ministry of Industry of the Republic of Indonesia, of the 4210 companies in Central Java, 361 are in the form of CVs (Ministry of Industry of the Republic of Indonesia, Directory of Industrial Companies, accessed via <https://kemenperin.go.id/direktori->

perusahaan?what=&prov=0&hal=1) diakses pada tanggal 5 Februari 2020).

In Article 19 of the Indonesian Commercial Code (KUHD) it is stated that "Companies formed by lending money or also known as limited partnership, are established between a people or between several private companies who are jointly and severally responsible for the whole, and one person or more as a money lender. A company can be at the same time a firm company against the firm companies in it and a limited partnership with a money lender". Thus, it can be said that CV is a development of the Firm. In this case, there are limited partners who are also known as active allies, namely partners who run and manage the company. The entire management of the company is held by an active partner. In addition, there are passive allies, namely allies who only deposit a certain amount of money.

According to Article 1 number 1 of the Republic of Indonesia Law Number 8 of 1997 concerning Company Documents, "A company is any form of business that carries out activities regularly and continuously for the purpose of obtaining profits and / or profits, whether organized by individuals or entities. a business that is in the form of a legal entity or non-legal entity, which is established and domiciled in the territory of the Republic of Indonesia". In running a company, business actors, including CV, often need funds for business development. Financing is one of the main factors needed by entrepreneurs including micro, small and medium enterprises in various countries (Badriyah et al., 2019). These funds can come from yourself (internal) or from other parties (external). In the case of funds originating from other parties, it is generally based on an agreement, including a payable agreement. Accounts payable agreement is not always carried out according to the agreement. Sometimes the debtor does not pay debts to creditors. In the event that the debtor does not fulfill his obligations, the receivables can be settled in several ways, including by declaring bankruptcy. Bankruptcy is one way of solving creditors' receivables problems (Kumar & Kumar, 2012). Bankruptcy is a means for creditors to get receivables from debtors (Putra, 2019).

Pursuant to Article 2 paragraph (1) of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations, requests for a declaration of bankruptcy can be made by the debtor himself or one or more of his creditors. A party that can be declared bankrupt is a debtor who has two or more creditors and does not pay off at least one debt that has matured and is collectible. According to Article 1 Number 3 UUK-PKPU, a debtor is a person who has a debt due to an agreement or law, the payment of which can be collected in court. In Article 1 Number 11 Every person is an individual or corporation, including corporations in the form of legal entities and non-legal entities under liquidation.

In the event that the debtor is declared bankrupt, there will be a problem as to how the legal consequences of the debtor's property in the form of a CV Business Entity are declared bankrupt. In addition, often the debtor's property becomes a guarantee for the debtor's engagement to other creditors. This can cause problems regarding how the legal protection for creditors who hold guarantees.

MATERIAL AND METHOD

Material

1. The concept of bankruptcy

Based on Article 1 point 7 of the Law on Bankruptcy and Suspension of Debt Payment, the statement of bankruptcy must be preceded by a statement by the Commercial Court, either at the request of the debtor or at the request of one or more creditors. The court that has the authority to adjudicate bankruptcy is the Commercial Court within the general court. The basic philosophy of regulating bankruptcy issues in the context of Indonesian law is a realization of Article 1131 and Article 1132 of the Civil Code.

Pursuant to Article 2 paragraph (1) of the Law on Bankruptcy and Suspension of Debt Payment Obligations, "A debtor who has two or more creditors and does not pay off at least one debt that has matured and can be collected, is declared bankrupt by a Court decision, both on his application, alone or at the request of one or more creditors". In simple terms, based on a quo provisions, there are 3 conditions for bankruptcy, namely, there must be debt, one of the debts is due and collectible, and the debtor has at least two creditors.

"The main objective of bankruptcy law is to provide protection and assistance to debtors. This is also an effort to distribute debtor assets evenly to creditors. In addition, it is also designed to prevent potential fraud. Bankruptcy is likely intentional, and bankruptcy is voluntary. Bankruptcy is the inability of an organization / company to pay its debts" (Onakoya & Ayooluwa, 2017).

According to Tata Wijayanta (2014), the basic condition for filing for bankruptcy is the debtor's unwillingness to pay his debt, not based on the debtor's inability to pay his debt. Creditorium courses are the first and foremost requirement in filing for bankruptcy (Akbar et al., 2017). The Bankruptcy and Delayed Debt Payment Law states that debtors must have at least two creditors, which is closely related to the philosophy of the birth of bankruptcy law. As previously explained, the bankruptcy law is a realization of Articles 1131 and 1132 of the Civil Code. In principle, all of the debtor's property becomes joint collateral for all creditors, the distribution is based on balance, that is, according to the size of the respective receivables, unless there is a valid reason for one receivable against another. In this case, the creditor's position is as a concurrent creditor.

Concurrent creditors are creditors who have concurrent receivables. Concurrent receivables are receivables that have the same position as other receivables. This concurrent creditor repayment of their receivables is based on the principle of balance, nothing takes precedence over one another unless there is a valid reason to prioritize one receivable over another. From the word, unless there is a valid reason to prioritize one receivable over other receivables mentioned in Article 1132 of the Civil Code indicates the existence of preference rights on certain creditors. Article 1133 of the Civil Code states that "a valid reason to prioritize one receivable over another is if there are receivables with privileges, pawns and mortgages". 1134 of the Civil Code states that pawns and mortgages are higher than privileges, unless the law provides otherwise. Thus, preferred creditors who hold liens, mortgages and now also include fiduciary guarantees and mortgages have the position of preferred creditors. The holder of this material guarantee also has a position as a separatist

creditor. Separatist creditors are creditors who are not affected by the debtor's bankruptcy.

Based on Article 2, paragraphs (2), (3), (4) and (5) of the Law on Bankruptcy and PKPU, bankruptcy applications can be submitted by: 1) The debtor at his own request; 2) One or more creditors; 3) Prosecutors for the public interest; 4) Bank Indonesia, if the Debtor is a bank; 5) Capital Market Supervisory Agency (now the Financial Services Authority / OJK), in the event that the Debtor is a Securities Company, Stock Exchange, Clearing Guarantee Institution, Depository and Settlement Institution, application. OJK is also authorized to submit applications for bankruptcy statements against Insurance Companies, Sharia Insurance Companies, reinsurance companies, or sharia reinsurance companies.

Parties that can be applied for bankruptcy, according to [Gunawan Widjaja \(2009\)](#), are: 1) Individuals; 2) Unions and associations without other legal entities. The application for a bankruptcy declaration against a firm must contain the name and place of residence of each participant who is jointly and severally bound for the entire debt of the firm; 3) Companies, associations, cooperatives and foundations that are legal entities. For bankruptcy submitted to companies, associations, cooperatives or foundations that are legal entities, the provisions concerning the authority of each legal entity shall apply as regulated in their articles of association; 4) Heritage, assets that have not been distributed to their heirs as a separate set of assets.

2. The Concept of the Property of the Bankrupt Debtor

In the event of bankruptcy, all assets belonging to the debtor are in general confiscation as bankruptcy assets. This bankruptcy includes all assets belonging to the debtor, the objects referred to in this case be tangible objects or intangible objects. Article 499 of the Civil Code states that "objects are all goods and rights that can be objects of property rights (Eigendom rights)". The debtor in this case is the party that has debt based on the agreement. Article 1 number (6) of the Law on Bankruptcy and Postponement of Debt Payment Obligations states that "Debt is an obligation that is stated or can be expressed in an amount of money either in Indonesian currency or foreign currency, either directly or which will arise at a later date. Or contingent, which arises because of an agreement or law and which is obliged to be fulfilled by the Debtor and if not fulfilled it gives the creditor the right to obtain fulfillment from the assets of the Debtor.

There is a difference between the meaning of "overdue debt" and "collectible debt". "Past due debt", or debt that has been due or expired, automatically becomes "debt that has been collected," but debt that has been collected is not necessarily a debt that has matured. The debt matures if according to the credit agreement or the debt agreement has reached the time schedule to be repaid by the debtor as specified in the agreement ([Sjahdeini, 2010](#)). In Article 1 point 4 of UUK-PKPU, it is stated that "Bankrupt debtor is a debtor who has been declared bankrupt by a court decision". In the event of a statement of bankruptcy, all assets belonging to the debtor are included in the bankruptcy budget, and the management is carried out by the curator.

This bankrupt debtor can be an individual or a business entity. One of the many business entities in people's lives is CV (Commanditaire Vennootschap). Chapter III Part 2 of the Code of Commercial Law regulates several types of

companies. Articles 19 to 21 of the KUHD regulate firm and corporate companies by way of lending money or also known as commaditer companies. Article 19 of the Criminal Code states that a Limited Liability Company or CV is a company to run a company formed between one person or several private companies who are responsible for the whole (solider responsibility) on one party and one or more parties as a money lender (geldschierter) on the other. Apart from that, technical provisions are also regulated in the Civil Code, Chapter VIII concerning Partnerships.

The Limited Alliance has 2 (two) types of allies, namely: Complementary Allies / Active Allies and Limited Allies / Passive Allies. Complementary Allies or Active Allies are allies who run the company and have the right to enter into agreements with third parties. That is, all company policies are carried out by active allies. Active allies are often referred to as the power company or the management company. Limited allies or passive allies are allies that only include capital in the partnership. If the company suffers a loss, they are only responsible for the amount of capital that is included and likewise if they are profitable, their money will get a certain amount of money depending on the capital they provide. The status of a limited partnership is only waiting for the results of the profits from the entered inbreng, and does not interfere in the management, business or business activities of the company. This ally is often called the silent persero ([Budiyono, 2010](#)).

RESEARCH METHODS

This study uses a normative juridical approach, namely research that emphasizes the existing rules in positive law. The normative juridical approach begins with analyzing the laws and regulations of the researcher as well as collecting secondary data (literature study) and to complement it, the researcher also collects primary data (conducts interviews). This study analyzes the positive legal rules relating to the juridical implications of Bankruptcy on the Debtor's property which is a CV. The research specification used in this research is descriptive analytical, the data used are secondary data, namely data obtained from a library study (library study). Secondary data consisting of primary legal materials, secondary legal materials and tertiary legal materials. The data collection method used is literature study, by collecting data from literature, official documents, laws and regulations and judges / jurisprudence decisions by studying, analyzing and reviewing literature and reading material related to the juridical implications of bankruptcy on debtor's property CV.

DISCUSSION

Due to the Bankruptcy Law on the Debtor's Property as a CV

In the event of a debtor's bankruptcy, it has legal implications for various matters. Bankruptcy has a major impact on business actors ([Brédart, 2014](#)). One of them is the debtor's property. This includes Object 499 of the Civil Code. Article 1 point 1 of Law Number 37 Year 2004 concerning Bankruptcy and Postponement of Debt Payment Obligations (UUK-PKPU) is "general confiscation of all assets of the Bankrupt Debtor whose management and / or settlement is carried out by the curator under the supervision of the Supervisory Judge". From this definition, it can be seen that all assets belonging to the debtor are under general confiscation, and the management and supervision are no longer in the power

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of the debtor, but are under the authority of the curator with the supervision of the Supervisory Judge.

The objects referred to in this case are tangible objects or intangible objects. Article 499 of the Civil Code states that objects are all goods and rights that can be objects of property rights (Eigendom rights). Goods indicate tangible objects, namely objects that can be captured by the five senses. The right to show intangible objects, namely objects that cannot be grasped by the five senses. These objects include moving objects as well as immovable objects. Moving objects are objects that can be moved or moved by themselves from one place to another. Immovable objects are land, and everything related to land which is one unit with the ground. The notion can be an object of property rights meaning that it can be controlled by a legal subject. Legal subjects include individuals (naturlijke persoon) and legal entities (rechts persoon).

Article 1 point 4 states that "Bankrupt debtor is a debtor who has been declared bankrupt by a court decision". In

the event of a statement of bankruptcy, all assets belonging to the debtor are included in the bankruptcy budget, and the management is carried out by the curator. This bankrupt debtor can be an individual or a business entity. One of the many business entities in people's lives is CV (Commanditaire Venootschap). CV is a form of the company.

The company is a form of cooperation carried out with the aim of seeking profit. In fact, the term cooperation has lived and developed in Indonesian society for a long time. This is evidenced by the existence of a culture of "mutual cooperation" which is inherent in the characteristics of the Indonesian nation. The practice of mutual cooperation has existed for a long time in various regions in Indonesia (Irfan, 2016). Between Gotong Royong and Cooperation, have the same spirit, namely working together on a job for a common goal.

In practice, many CV debt settlements are found as debtors through bankruptcy institutions as can be seen from the following table:

Table 1. Number of CV Bankruptcy Requests in Semarang, Surabaya and Jakarta District Courts 2016-2019

No.	Year	PN Semarang	PN Surabaya	PN Jakarta	Amount per year
1.	2016	0	5	3	8
2.	2017	2	4	6	12
3.	2018	2	10	4	16
4.	2019	1	3	3	7
Total number					43 Cases

Source: Information System for Case Tracing of Semarang District Court, Surabaya District Court and Jakarta District Court

Bankruptcy includes all assets of the Debtor at the time the decision to declare bankruptcy is pronounced as well as everything obtained during the bankruptcy (Article 21 of the Bankruptcy Law and Postponement of Debt Payment). The legal consequence of the court decision against the debtor is that the bankrupt debtor loses the right to manage and control his assets which are included in the bankruptcy estate. Management and settlement of the bankruptcy debtor's assets shall be carried out by the curator under the supervision of the Supervisory Judge. This is in accordance with Article 1 point 1 in conjunction with Article 24 Paragraph (1) of the Bankruptcy and Suspension of Debt Payment Obligations. In this case the debtor can be individuals or companies, one of which is CV. A bankrupt company cannot carry out legal activities at all regarding these assets. Bankruptcy causes the debtor to lose his rights in the legal field of his assets because all the assets of the debtor and everything obtained during the bankruptcy are in general confiscation from the time the decision for the bankruptcy declaration was pronounced.

It must be noted that by deciding to become a bankrupt debtor, it does not mean that the debtor has lost his civil rights (Volumekomen handelingsbevoegdheid) to be able to carry out all legal actions in the civil sector, therefore, since the decision to declare bankruptcy is declared only the assets of the bankrupt debtor are under the control of and management of other parties, according to Article 15 paragraph (1) in conjunction with Article 69 paragraph (1) UUK-PKPU, the owner of the bankrupt debtor's assets (bankruptcy assets) is the curator. In accordance with Article 26 UUK-PKPU claims regarding rights or obligations relating to bankruptcy assets must be submitted by or against the curator.

Although in bankruptcy all assets of the bankrupt debtor including bankruptcy assets are under general confiscation (general confiscation), there are exceptions to certain assets belonging to the debtor as stipulated in Article 22 of the Bankruptcy Law and Postponement of Debt Payment Obligations, which are as follows:

- a. Objects, including animals that are really needed by the debtor in connection with his work, equipment, medical devices used for health, beds and equipment used by the debtor and his family, and foodstuffs for 30 (thirty) days for the debtor and his family, which is in that place;
- b. Everything the debtor receives from his own job as remuneration for a position or service, as wages, pensions, waiting money or allowances, to the extent determined by the Supervisory Judge; or,
- c. Money given to debtors to fulfill an obligation to provide a living according to law.

Considering that the requirements for filing for bankruptcy under the UUK-PKPU are very light, there are at least 2 creditors and one of the debts is due, and the impact of bankruptcy on debtor's assets is so great, anticipatory action is very necessary to minimize the occurrence of bankruptcy to the perpetrator. effort.

Legal Effects on the Debtor's Property which is the Object of the Material Collateral

Based on the schuld and Haftung principle, in principle the person in debt is responsible for his debt. If necessary, the debtor must sell all of his assets to pay the debt. This is implied by Article 1131 of the Civil Code. This debtor's property becomes a general guarantee for all debtor engagements to creditors. All of the debtor's assets are all creditors having the same position. The distribution is based on the principle of balance, which is balanced

according to the size of the respective accounts receivable. There are exceptions to this general principle, namely if there is a valid reason to prioritize one receivable over another. This is explained in Article 1132 of the Civil Code. One of the valid reasons is if there are creditors who hold material guarantees. This is regulated in Article 1133 of the Civil Code. Material guarantees include liens, mortgages, fiduciary security and mortgages. This material guarantee is one of the special guarantees.

In the event that there is a material guarantee, then there are certain objects that are the object of guarantee. The object which is the object of this material collateral is separate from the other objects belonging to the debtor. In the case of a bankrupt debtor, the said assets are not included in the bankruptcy estate, so that they can be sold directly by the creditor to collect the credit. This is a consequence of the existence of material guarantees, which makes creditors have the position of preferred creditors as well as separatist creditors. As a separatist creditor, he has the right to execute the assets of the bankrupt debtor which are the object of property collateral.

Preferred Creditors are creditors whose debt settlement takes precedence over other creditors. Separatist creditors are creditors who are not affected by the debtor's bankruptcy. Article 21 of Law No. 4 of Year on Mortgage Rights (Mortgage Rights Law) states that "if the guarantor of the Mortgage is declared bankrupt, the holder of the Mortgage is still authorized to exercise all the rights he has received." Article 27 Paragraph (1) of Law of the Republic of Indonesia Number 42 of 1999 concerning Fiduciary Security (Fiduciary Security Law) states that "Fiduciary Recipients have precedence over other creditors." Article 27 Paragraph (2) of the Fiduciary Guarantee Law states that "The right which takes precedence is the right of the Fiduciary Recipient to collect the payment of his / her debt on the result of the execution of the Object which is the object of the Fiduciary Guarantee." Furthermore, Article 27 Paragraph (3) states that "The prioritized rights of the Fiduciary Recipient are not abolished due to bankruptcy and or liquidation of the Fiduciary".

The provisions in the law regarding material guarantees are in line with Article 55 Paragraph (1) of the Law on Bankruptcy and Postponement of Debt Payment. In principle, every Creditors holding a pledge, fiduciary security, mortgage, mortgage, or other collateral rights on property, can exercise their rights as if there was no bankruptcy. This is a consequence of the position of creditors holding material guarantees as separatist creditors.

Based on the aforementioned provisions, the rights of separatist creditors should be able to immediately carry out the execution of objects that are object of property collateral. However, it turns out that this right is limited by the provisions of Article 56 (1) of the Bankruptcy Law and PKPU. Creditors' execution rights and the rights of third parties to claim their assets under the control of the Bankrupt Debtor or Curator are suspended for a maximum period of 90 (ninety) days from the date of the verdict bankruptcy statement was pronounced. This actually contradicts the basic principle that creditors who hold material guarantees should not be affected by the debtor's bankruptcy. Thus, the separatist creditor should be able to execute collateral immediately, because the object objects for collateral are separate from the bankruptcy estate.

Furthermore, Article 59 Paragraph (1) of the Bankruptcy and PKPU Law states that Creditors holding material security rights must exercise their rights at the latest 2 (two) months after the start of the insolvency state. Article 59 Paragraph (2) states that "After the 2-month period has passed, the Curator must demand the delivery of the collateral for the next sale in accordance with the method referred to in Article 185, without prejudice to the right of the right holder of the Creditors on the proceeds from the sale of the collateral.

From the provisions governing the legal consequences of bankruptcy on objects of object of material security there is an inconsistency in the arrangements between one statutory regulation and another or between articles in the same statutory regulation. This can be detrimental to the parties, especially creditors who hold material guarantees. As a result, creditors holding material guarantees lack legal protection.

CONCLUSION

Bankruptcy causes the debtor's property, including the CV business entity, to enter bankruptcy. In this case the Debtor no longer has the authority to control and manage these assets. The curator is under the supervision of the Supervisory Judge who carries out the management and settlement. Objects that are the object of material collateral are separate assets, not included in the bankruptcy bill. Such object should be immediately executed by the Creditors of the Liability Guarantee Holder as a consequence of their position as Separatist Creditors. However, there are regulations that are out of sync between the laws that govern Material Guarantee and the UUK-PKPU and between the articles in the UUK-PKPU. On the one hand, being a separatist creditor should not be affected by the bankruptcy of the debtor, however, it turns out that there is a waiting period (automatic stay) of 90 days. In addition, the sales time is limited to only 2 months. This results in a lack of legal protection for creditors holding material guarantees in the event that the debtor goes bankrupt.

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