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People's Sovereignty and Constitutional Amendments: Reflections on Changes in Indonesia's Constitutional System

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Abstract: This paper examines how the principle of people's sovereignty is reflected through a series of amendments to the 1945 Constitution as well as its implications for the Indonesian constitutional system. With a normative-analytical approach, this paper examines the substance of key articles before and after amendments, examines constitutional political debates, and compares with the experiences of other countries. The results of the analysis show that the amendments have strengthened the mechanisms of people's participation, through representative institutions and decentralized mechanisms, but there are still challenges in the implementation of social control and the strengthening of checks and balances. Policy recommendations are directed at expanding participatory democratic instruments and strengthening independent oversight institutions.

Keyword: People's Sovereignty, Constitutional Amendments, 1945 Constitution, Constitutional System, Participatory Democracy

INTRODUCTION

Background

The principle of popular sovereignty is an essential element of modern constitutional democracy, where the people are positioned as the highest source of legitimacy of state power. This concept is rooted in the thought of classical political philosophers such as Jean-Jacques Rousseau and John Locke, who asserted that state power is actually derived from the will of the people through a social contract (Rousseau, 1762; Locke, 1689). Within the framework of the state of law, people's sovereignty is not only meaningful as a normative symbol, but must be institutionally and procedurally articulated through mechanisms of representation, participation, and institutional accountability.

In Indonesia, the idea of people's sovereignty has been an ideological and constitutional foundation since the 1945 proclamation of independence. Article 1 paragraph (2) of the 1945 Constitution after the amendment explicitly states that "sovereignty is in the hands of the people and is exercised according to the Constitution." However, in the practice of constitutional law

in the New Order era (1966–1998), this principle experienced significant distortions along with the strengthening of the centralization of executive power under President Suharto.

In political theory, this distortion of the principle of people's sovereignty can be explained through the concept of hegemonic preservation, which is a strategy carried out by the ruling elite to maintain their dominance over the political and legal system in a way that appears to be legal-formal but actually castrates the substance of democracy (Tom Ginsburg, 2003). The MPR as the highest institution of the state at that time was constructed to represent the interests of the state symbolically, not as a real representation of the will of the people. The majority of MPR members are not the result of direct elections, but come from representatives of the ABRI factions and factions who are elected through a top-down, not bottom-up, mechanism. This gives birth to the phenomenon of "pseudo-sovereignty", which is a state in which democratic structures and symbols appear to exist institutionally, but are substantively controlled by oligarchic groups allied with executive power.

This condition is in line with what Guillermo O'Donnell put forward in his theory of delegative democracy, in which the head of state is perceived as the sole holder of the people's authority and acts as if he has been given a full mandate without adequate control and accountability mechanisms (O'Donnell, 1994). In the context of Indonesia in the New Order era, this practice manifests itself in the form of almost unlimited presidential power, the dominance of Golkar as the main political vehicle, and the institutionalization of control over the media, civil society, and opposition political parties. Theoretically, the distortion of people's sovereignty under this system of authoritarianism can also be understood through the path dependency theory approach, which explains how political institutions tend to replicate established patterns of power and inhibit the organic change of democratic structures (Pierson, 2000). When state institutions are controlled by elites who have an interest in maintaining the status quo, institutional reform becomes stagnant or even pseudo.

Although Indonesia formally has a constitution that upholds the sovereignty of the people, the practice of statehood during the New Order period actually shows the dominance of state power over the people. The root of this problem lies not only in the legal text, but also in the power relations built by authoritarian political structures. This reinforces the argument that the constitutional reforms that began post-1998 should be interpreted not only as a legal process, but also as an attempt to reconstruct political legitimacy and substantive democracy. The momentum of the 1998 Reform became an important turning point in the history of Indonesian constitutionalism. Public demands for democratization, the limitation of presidential power, and the restoration of the role of the people as the main sovereign holders, became the basis for the implementation of four waves of amendments to the 1945 Constitution (1999–2002). This amendment is not just a technical revision of the law, but a total repositioning of Indonesia's constitutional architecture. Some of the fundamental transformations that have occurred include: strengthening the presidential system, the establishment of the Constitutional Court, direct elections, explicit recognition of human rights, and the establishment of the Regional Representative Council (DPD) as an instrument of regional representation at the central level.

However, two decades after the amendment, a very crucial reflective question arises: has the constitutional amendment really realized the principle of people's sovereignty substantively, or is it just an institutional formality? Normatively, the people do have the right to vote, freedom of opinion, and representation through the legislature. But in practice, the phenomenon of transactional politics, the weak legislative and supervisory functions of the House of Representatives, and the decline in public trust in state institutions indicate that there is a democratic deficit in the implementation of people's sovereignty in Indonesia (Hadiz and Robison, 2013).

On the other hand, new challenges have also arisen in the dynamics of relations between state institutions after the amendment, especially related to the distribution of power, the mechanism of checks and balances, and central-regional relations. The constitutional legal mechanism has undergone a complexity that requires a review of the coherence of the amended constitutional system with the basic principles of constitutional democracy. Several discourses to carry out the fifth amendment to the 1945 Constitution also emerged, such as the strengthening of the MPR and the discourse on the direction of the state, which actually has the potential to open up space for democratic regression if not critically and constitutionally guarded.

From a global perspective, comparative studies show that constitutional changes in many post-authoritarian countries often do not necessarily strengthen substantive democracy. Countries such as Thailand, the Philippines, and some African countries experience the paradox of constitutional democracy, in which democratic institutions are formally formed, but are co-opted by political elites who use the legal framework to perpetuate power. Therefore, it is important for Indonesia to conduct critical reflection on the results of constitutional amendments not only in a legal perspective, but also in the socio-political dimension and democratic proxy (Ginsburg and Aziz, 2018).

Based on this background, this paper aims to analyze the reflection of the principle of people's sovereignty in the process and results of amendments to the Indonesian constitution. This paper traces how normative changes in the 1945 Constitution reconstructed the constitutional system and the extent to which these changes affected the quality of democracy and the exercise of people's sovereignty. This study is expected to make a theoretical and practical contribution to the discourse of constitutional law and constitutional reform in Indonesia.

Problem Formulation

The transformation of Indonesia's constitution through the four stages of amendments to the 1945 Constitution (1999–2002) is an important milestone in the country's constitutional history. The amendment has significantly changed the institutional structure of the state and introduced new norms that normatively aim to strengthen the principle of people's sovereignty. However, more than two decades after the changes were enacted, the effectiveness and consequences of this transformation are still the subject of debate among academics, legal practitioners, and civil society. Therefore, this study seeks to answer three key questions as a formulation of the main problem:

1. How do the changes in the constitutional provisions in the 1945 Constitution reflect the principle of people's sovereignty substantially, both in normative and institutional aspects?
2. To what extent does the amendment to the 1945 Constitution strengthen or weaken the mechanism of people's participation in the constitutional process?
3. What lessons can be drawn from international practice in the process and outcome of constitutional amendments, especially in post-authoritarian democracies such as India, South Africa, and the Philippines?

The formulation of this problem also frames the structure of the analysis in the research, which not only focuses on the legalistic dimension, but also pays attention to sociopolitical dynamics, legal culture, and the democratization process in the context of the constitutional transition.

METHOD

This research was prepared using a normative-analytical approach, which is an approach that examines legal norms in the context of the constitutional system through the interpretation of legal texts and developing constitutional practices. This approach was chosen because the

issues studied are closely related to changes in the basic legal structure of the state and its impact on the implementation of the principle of people's sovereignty in Indonesia's constitutional democratic system. A normative approach is used to analyze the legal framework and provisions of the constitution that have undergone changes, while an analytical aspect is applied to assess the implications of such changes on the institutional configuration and relations between state institutions.

1. Data Source

To obtain a complete and systematic picture, this study uses two types of data: primary data and secondary data. Primary data includes official documents that have an authoritative position in the Indonesian legal system, namely the text of the 1945 Constitution of the Republic of Indonesia in the versions before and after the amendment, the minutes of the session of the People's Consultative Assembly (MPR) during the amendment process, as well as various relevant sectoral laws such as the Law on the MPR, DPR, DPD, and DPRD (MD3 Law), the Election Law, and the Election Law, and the Constitutional Court Law. Meanwhile, secondary data are obtained from various academic sources and policy documentation that can enrich the analysis. These sources include scholarly articles from reputable international journals, accredited national journals, textbooks on contemporary constitutional law, as well as reports and indexes of democracy from international institutions such as the United Nations Development Programme (UNDP), the International Institute for Democracy and Electoral Assistance (IDEA), and the World Justice Project (WJP). These secondary data not only broaden theoretical and empirical perspectives, but also allow comparisons with international practices in constitutional reform and the strengthening of people's sovereignty.

2. Analytical Techniques

This study uses content analysis techniques on constitutional documents to identify changes in meaning, normative intention, and semantic structure in the amended articles. This analysis was carried out systematically by tracing the editorial, conceptual, and institutional aspects that underwent a shift during the four stages of constitutional amendment (1999–2002). The main focus is to assess the extent to which these changes strengthen or weaken the principles of people's sovereignty and constitutional democracy.

In addition, a comparative analysis of the constitutional system in several democracies that have experienced post-authoritarianism transitions has also been conducted. Case studies used as references include Germany, which adopted a system of layered representation (bicameralism) through the Bundestag and Bundesrat as an instrument of checks and balances based on federalism, and India, which emphasized the role of the Supreme Court in encouraging judicial activism as a counterweight to legislative and executive power. This comparison is intended to identify constitutional practices that can be a benchmark in efforts to strengthen Indonesia's constitutional system in the future, especially in order to ensure that the principle of people's sovereignty remains at the core of state life

Literature Review

1. People's Sovereignty Theory

People's sovereignty is a basic principle in constitutional democracy that affirms that the legitimacy of state power comes from the people. In contemporary literature, this theory has evolved from the paradigm of majoritarianism to deliberative democracy, where popular participation is not only limited to elections, but also to public decision-making at large (Rousseau, 1762). This theory is in line with the thinking of Tormey (2021), who emphasizes the importance of democratic responsiveness and institutional openness in a democratic state (Tormey, 2021).

2. Constitutional Amendment

According to Elkins et al. (2009), constitutional amendment is a political-legal process that serves to maintain the relevance of basic constitutional norms to the dynamics of society (Elkins et al., 2009). In the Indonesian context, Lev (2020) noted that the amendment of the 1945 Constitution has transformed the state power architecture from the MPR supremacy model to a more modern and functional power distribution system (Lev, 2020). A recent study by Butt and Lindsey (2021) emphasizes that the main challenge of the amendment is not only on the formulation of norms, but also on the institutional implementation and capacity of public oversight (Butt and Lindsey, 2021).

3. Constitutional and Representation System

Studies of post-amendment constitutionality show that although Indonesia's institutional design has modernized, challenges still arise in terms of the effectiveness of legislative, control, and representation functions (Horowitz, 2019). The Global State of Democracy 2023 report by International IDEA highlights the phenomenon of "representation gaps" in new democracies, where formal representation systems do not always align with the substantive aspirations of the people (International IDEA, 2023). Therefore, the study of the effectiveness of constitutional design should pay attention to the interaction between laws, institutions, and civil society.

RESULTS AND DISCUSSION

Changes to the Formulation of Sovereignty in the 1945 Constitution

Before the amendment, Article 1 paragraph (2) of the 1945 Constitution stated that "sovereignty is in the hands of the people and is fully exercised by the People's Consultative Assembly." This formulation gives almost absolute authority to the MPR as the highest institution of the state and causes the centralization of the legitimacy of power in an institution that is not entirely elected by the people. The first amendment of the 1945 Constitution (1999) revised this article to: "Sovereignty is in the hands of the people and is implemented according to the Constitution," which conceptually moves the locus of the implementation of sovereignty from one institution (MPR) to the constitutional system as a whole (Jimly Asshiddiqie, 2021).

The implications of this change are paradigmatic. People's sovereignty is no longer monopolized by a single representative institution, but is carried out functionally by a series of democratic institutions, the House of Representatives as the law-maker, the DPD as the regional representative, the Constitutional Court as the guardian of the constitution, and the President who is directly elected by the people. Thus, the amendment creates a transformation from the model of legislative supremacy to a more pluralistic constitutional supremacy and open to the principle of checks and balances (Albert, 2021).

Decentralization and Regional Autonomy: Amendments and Implications

The third amendment to the 1945 Constitution (2001) provides a stronger constitutional basis for the implementation of asymmetric decentralization through the affirmation of Articles 18, 18A, and 18B. This provision opens up space for the regions to regulate and manage their own government affairs according to the principle of autonomy as widely as possible. Politically, this expands people's participation in decision-making processes at the local level and strengthens the relationship between central and local governments. However, a number of empirical studies show that post-reform decentralization also presents new challenges in the form of fragmentation of authority, politicization of regional bureaucracy, and corrupt practices that do not decrease significantly (Antlöv et al., 2020). Although constitutionally participation is expanded, substantively the involvement of citizens in regional decision-making is still procedural and has not touched the substance of democratic empowerment at the local level. This shows that the success of decentralization depends not only on the design of the

constitution, but also on the quality of the implementing institutions and the local political culture (Vel and Bedner, 2021)

Strengthening the Checks and Balances Mechanism

One of the important achievements of the constitutional amendment is the strengthening of the checks and balances mechanism through the establishment of new institutions, such as the Constitutional Court and the Corruption Eradication Commission (KPK). The Constitutional Court, as the guardian of the constitution, is authorized to conduct legal testing of the Constitution, decide disputes over authority between state institutions, and resolve disputes over election results. The presence of the Constitutional Court has opened up space for a more open judicial review based on the principles of constitutional justice (Lindsey and Butt, 2020).

Meanwhile, the KPK was formed based on the constitutional mandate to create clean and corruption-free governance. Institutionally, the existence of the KPK is a concrete form of horizontal control that aims to maintain the integrity of state institutions. However, in its development, the effectiveness of the KPK has experienced ups and downs due to political pressure and regulatory revisions that limit its authority (Mietzner, 2021). This shows that the existence of constitutional oversight institutions requires political protection and civil society support so that they are not controlled by actors who want to avoid accountability.

International Comparative Practice: Germany and India

Learning from constitutional practices in other countries can enrich perspectives on the effectiveness of implementing the principle of people's sovereignty. In Germany, the system of representation is run in layers through the Bundestag and the Bundesrat, which institutionally reflect direct representation and federal representation. People's participation is mostly carried out through soft participation channels such as public hearings, legislative consultations, and legally strengthened electronic petitions (International IDEA, 2023).

Instead, India adopted a direct participation approach in some aspects of constitutional reform through proactive constitutional courts. The Supreme Court of India has often initiated progressive legal changes through the principles of judicial activism, especially in cases of human rights and civil liberties. In addition, the PIL (Public Interest Litigation) mechanism allows the people to be directly involved in the legal process and state policies without having to go through formal political representation (Baxi, 2020).

Both models show that people's sovereignty can be exercised through various forms, both formal representation and direct participation, as long as there are adequate institutional protections and space for participation. Indonesia can learn from these two practices to develop a more hybrid and responsive participatory model to contemporary civil society dynamics.

DISCUSSION

1. Success: Institutionalization of Legal Empowerment in the Legislative System

One of the important achievements of the amendment to the Indonesian constitution is the strengthening of the principle of legal empowerment, namely legal empowerment that allows the people to play an active role in the legislative process. This is realized through the provisions of Article 96 of Law Number 12 of 2011 concerning the Formation of Laws and Regulations (PPP Law), last amended by Law N0 13 of 2022, which gives the public the right to provide written and oral input to the bill, and even propose the drafting of laws through the mechanism of community initiative rights (Republic of Indonesia, 2022). This principle of legal empowerment is theoretically rooted in the thought of Stephen Golub, who states that legal empowerment is the process of institutionalizing people's access to the law and decision-making, so that the law is not only an instrument of the state, but also a tool of society to fight

for its rights and interests (Golub, 2020). Furthermore, Julio Faundez affirms that legal empowerment contributes to the creation of substantive justice, where marginalized groups can be directly involved in the formation of legal norms (Faundez, 2022). The participatory regulation in the PPP Law is also a manifestation of the constitutionalization of public participation within the framework of deliberative democracy. The theory of deliberative democracy developed by Jürgen Habermas places public participation in the public sphere as the main foundation for the formation of legal and policy legitimacy. In this paradigm, policy formulation is no longer based on the political dominance of the majority, but on the quality of deliberation, namely the open, equal, and rational exchange of reasons between the state and society (Habermas, 2021). This concept has been widely adopted in contemporary constitutional law literature, including in the context of constitutional amendments in Indonesia.

Practically, the right of community initiative in the legislative process has strengthened the role of civil society, academics, professional organizations, and non-governmental organizations in the formation of national legal norms. Several important bills such as the Village Bill, the Personal Data Protection Bill, and the revision of the KPK Law show a significant influence from public input, both through formal consultation mechanisms, public hearings, and online petitions. This shows that the sovereignty of the people is no longer symbolic, but is gradually manifesting itself in institutional procedures that are explicitly recognized and regulated by the Indonesian legal system (Butt, 2023). Thus, the constitutional amendment and the renewal of the PPP Law affirm Indonesia's democratic transition towards a more inclusive, deliberative, and responsive direction, where the people are the main subjects in the formation of laws and public policies.

2. Challenges: Elitite Participation and Limited Access to Information.

Although the amendment of the constitution and the renewal of the Law on the Establishment of Laws and Regulations have provided a normative basis for public participation, the reality on the ground shows that there is a significant gap between legal norms and implementation. The two main challenges that stand out are limited access to public information and the dominance of participation by elite groups.

First, limited access to public information is often related to the transparency of the legislative process that is not yet fully open. Although Indonesia already has Law Number 14 of 2008 concerning Public Information Disclosure, the World Justice Project Rule of Law Index 2023 report places Indonesia at a score that is still below the global average in open government indicators, especially in legislative information access sub-indicators (World Justice Project, 2023). This is in line with the findings of Aspinall & Berenschot (2019) which show that the policy-making process often takes place in closed spaces, with public involvement being symbolic (Aspinall & Berenschot, 2019). Second, existing participation tends to be elite and exclusive, where effective engagement is more accessible to actors who have economic resources, political networks, or technical knowledge. This phenomenon can be explained through the theories of political elitism (Pareto, Mosca, & Michels) which argue that in any political system, a handful of elites tend to monopolize decision-making, despite the existence of a legal framework that guarantees broad participation (Mosca, 2022). In the Indonesian context, research by Warburton & Aspinall (2019) found that political oligarchy networks have a significant influence in determining policy direction, even after constitutional reforms (Warburton and Aspinall, 2019).

This limited access to information and the dominance of the elite has implications for limited substantive participation, where the participation of the people in the legislative process does not directly affect the content of policies. Public participation is more often positioned as a procedural obligation to meet the formal requirements of the law, rather than as an equivalent deliberative process. In the perspective of Habermas-style deliberative democracy, this

condition weakens the quality of legal legitimacy because public decisions are not born from inclusive and rational discourse (Habermas, 2021). Thus, although the legal framework has opened up opportunities for participation, structural barriers in the form of limited access to information and elitist bias in policy-making remain fundamental challenges in realizing substantive people's sovereignty.

3. From Challenge to Policy: Closing the Practice Norm Gap

To bridge the gap between norms and practices, transformative and inclusive policy directions are needed. First, strengthening e-democracy needs to be prioritized as an instrument for modernizing people's participation channels. The use of digital technology in public consultation, online hearings, and e-legislation tracking systems can expand the reach and quality of public participation. Governments can adopt models such as GovTrack in the United States or Parliament in the European Union that allow citizens to track the legislative process and submit comments directly (Peixoto and Fox, 2021). Second, constitutional education must be expanded in the formal and non-formal education curriculum to improve people's constitutional literacy. Public knowledge of constitutional rights, democratic procedures, and the structure of state institutions are the main prerequisites for meaningful and quality participation. This is in line with the theory of empowered participatory governance which links the quality of participation to the intellectual and social capacity of citizens (Fung, 2020). Third, there needs to be a strategic effort to strengthen independent supervisory institutions such as the Ombudsman, Komnas HAM, and the Public Information Commission. These institutions play an important role as a liaison between the people and the state, while keeping the practice of democracy within the corridor of the constitution.

Strengthening the capacity, budget, and legal protection of these institutions is an important part of ensuring that the principle of checks and balances can run effectively, not only vertically between institutions, but also horizontally between the state and society. The main challenges, namely limited access to public information and still elitist participation, show that there is an implementation gap between participatory legal architecture and the reality of policy practice. To bridge this gap, policy direction needs to be transformative, reorganizing the legislative process and governance ecosystem to be more open, inclusive, and accountable. Below are three complementary policy corridors.

- a. Expanding meaningful digital participation. The priority is to move from formal, procedural consultations to digital participation that is proven to have an impact on the content of the policy. This includes: an integrated e-legislation portal (bill text, issue tracker, version control, comment analytics), documented online hearings, as well as an Application Programming Interface (API) of legislation data for citizen and civic tech monitoring. Comparative findings show that digital governance designed with clear feedback loops improves the quality of policy responses and reduces representation gaps (A VILLAGE, 2022; Peixoto and Fox, 2021),
- b. Improve constitutional literacy and participation capacity. Substantive participation depends on the capabilities of citizens and the intermediary ecosystem. The structured constitutional literacy program, through formal/non-formal curriculum, community law clinics, campus policy labs, NGOs, strengthens the public's ability to read the draft bill, prepare policy briefs, and utilize the right to consultation under Article 96 of the PPP Law. The empowered participatory governance framework emphasizes that the quality of deliberations increases significantly when citizens are equipped with procedural knowledge and the support of policy mediators (Fung, 2020).
- c. Strengthen independent oversight and data disclosure. The effectiveness of participation requires institutional guarantees: (a) ex-ante and ex-post regulatory impact assessments (RIA) that must be published; (b) proactive disclosure of budget data, academic manuscripts, and legislative drafting notes; (c) protection of the authority of supervisory

institutions (Ombudsman, Information Commission, Komnas HAM) from political intervention. Global standards show that advanced open government data, machine formats, open licenses, and timely updates, correlate with increased accountability and policy quality (OECD, 2022).

CONCLUSION

The amendment of the 1945 Constitution has brought fundamental changes to the design of Indonesia's constitutional system, especially in affirming the principle of people's sovereignty institutionally. The change in the formulation of Article 1 paragraph (2) from the supremacy of the MPR to the supremacy of the constitution has shifted the locus of the implementation of sovereignty from a single institution to the entire institutional architecture of the state. This transformation was strengthened by the establishment of new institutions such as the Constitutional Court, the Regional Representative Council, and the strengthening of direct presidential elections as a form of popular mandate.

However, this study found that these achievements have not fully realized substantive people's participation. Structural barriers, such as limited access to public information and the dominance of participation by elite groups, still limit the effectiveness of the principle of deliberative democracy in practice. As a result, people's sovereignty is often reduced to procedural participation, not participation that affects the substance of policy. These findings affirm that constitutional reform is not the end point, but a continuous process that requires strengthening institutions, political culture, and constitutional literacy of society (Ginsburg and Huq, 2018).

Recommendation

Based on these findings, the study proposes three strategic recommendations:

1. Integration of participatory democracy mechanisms. Expanding channels of people's participation through mechanisms of democracy beyond elections, such as local referendums, citizen assemblies, and public policy juries, can strengthen policy legitimacy and bridge the representation gap. The experience of countries such as Switzerland and some states in the US shows that local referendums can be an effective instrument in building public trust and strengthening local government accountability (Qvortrup, 2021).
2. Increasing the transparency of the legislative process. Transparency of legislation must move from just the publication of draft laws to the transparency of legislative reasoning. This includes the publication of academic manuscripts, public response matrices, and regulatory impact assessments (RIA) online in an easily accessible and machine-readable format. The 2022 OECD standard confirms that full openness in the legislation process is directly proportional to the quality of regulation and the level of public trust (OECD, 2022).
3. Strengthening the Capacity of Independent Oversight Agencies. Institutions such as the Ombudsman, the Information Commission, Komnas HAM, and the KPK need to be protected from political intervention and provided with adequate resource support. Legal protection of their supervisory authority must be clearly regulated in the constitution or organic law. The experience of Constitutional Safeguard Bodies in Canada and Australia proves that the sustainability of independent supervisory bodies plays a crucial role in ensuring the running of sound checks and balances (Ackerman and Rose-Ackerman, 2020).

By implementing these recommendations, Indonesia has the opportunity to consolidate its constitutional democracy, not only in the institutional dimension, but also in the quality of public participation. In the end, people's sovereignty can be truly realized as a principle that lives, operates, and is felt in every political process and public policy.

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