

# Indonesian Criminal Law and Policy that Influence Overcrowding in Prisons

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## ABSTRACT

*Overcrowding represents a pervasive challenge for correctional institutions across Indonesia. However, it is imperative to recognize that overcrowding is a multifaceted issue with deep-rooted causes that cannot be addressed piecemeal. A comprehensive understanding of the political and legal landscape in Indonesia is essential to pinpoint various factors and legal frameworks perpetuating this problem. This study undertakes a descriptive examination of legal practices in Indonesia, drawing on empirical evidence from diverse studies related to prison management. Moreover, comparative analyses of legal systems, particularly those addressing overcrowding in various countries, are utilized as a benchmark to devise tangible solutions tailored to Indonesia's context. Findings from this research underscore the active role of Indonesia's legal and judicial systems in exacerbating overcrowding. Therefore, it underscores the urgent need for legal reform and the implementation of alternative sentencing measures devoid of incarceration as viable long-term strategies to mitigate overcrowding in Indonesian prisons.*

**Keyword:** *Legal politics, legal policy, correctional institutions, overcrowding.*

## 1. INTRODUCTION

Prison training institutions have long been established in Indonesia to provide a deterrent effect through imprisonment because of legal punishment. Along with the development of Indonesian society's understanding of human rights values, there has been a shift in perspective in understanding the function of correctional institutions from efforts to separate perpetrators of law violations to institutions that adhere to rehabilitative values. This paradigm shift has encouraged the transformation of the function of correctional institutions, which were originally only focused on deterrent effects, into institutions that prioritize correction functions with the goal of reintegrating inmates [1]. The idea that is an important foundation for the transformation of correctional institutions is the understanding that inmates are part of society. When they have finished serving their sentence, the inmates will be returned to society and add color to people's lives.

The implementation of the rehabilitative function within correctional institutions has led to the development of various rehabilitation programs, each designed with distinct functions and objectives. However, despite their diversity, these programs generally share a common goal: equipping inmates with skills and enhancing their productivity to facilitate their successful reintegration into society upon release. The rehabilitative function of correctional institutions is essentially a systematic approach aimed at reducing recidivism rates [2]. This multifaceted process comprises several components, including the enforcement of discipline, active inmate participation, and efficient facility management. Inmates are engaged in constructive programs and closely monitored over a specified period to assess the impact of these interventions. As a form of recognition, inmates who complete rehabilitation programs successfully are often awarded certificates or other commendations. In a broader social context, rehabilitation endeavors to improve or restore inmates' mental well-being and societal perspectives through therapeutic interventions and support mechanisms during their incarceration [3].

In practice, the rehabilitative function and outcomes of correctional institutions have failed to deliver optimal improvement results, as evidenced by the persistently high rates of recidivism and crime within these facilities. It has become evident that numerous management issues plaguing correctional institutions stem not only from subpar management quality but also from a multitude of limitations, including inadequate facilities, limited capacity, and financial constraints [4]. One significant contributing factor to the suboptimal nature of rehabilitative efforts within

correctional institutions is overcrowding. Essentially, overcrowding occurs when the demand for detention space within a jurisdiction surpasses the capacity provided, leading to congestion and strain on resources [5], [6].

Overcrowding undoubtedly yields a multitude of adverse effects. It is widely acknowledged that the increased inmate population within correctional institutions exacerbates tensions among prisoners, escalates violence rates, fosters racism, facilitates the spread of diseases, elevates stress levels, and compromises the quality of healthcare services, as well as the mental and physical well-being of detainees. Among these, the most prevalent and severe repercussion is the occurrence of riots and violence within correctional facilities, involving conflicts between inmates themselves and between inmates and correctional officers, often resulting in fatalities. Additionally, the overcrowded conditions in these institutions have led to a decline in the quality of life, hindering the development and satisfaction of basic needs such as access to adequate food, sufficient space, privacy, and sanitation. Consequently, achieving optimal social rehabilitation outcomes within correctional institutions becomes exceedingly challenging, as the likelihood of recidivism or repeat offenses escalates upon inmates' reintegration into society [7], [8]. Moreover, rehabilitation programs aimed at improving inmates' behavior suffer from imbalances and inadequacies, as they are unable to accommodate all inmates due to space limitations, insufficient resources and facilities, and exorbitant costs.

Based on several studies examining overcrowding, it is evident that there are several primary causes contributing to the overcrowding of correctional institutions. Research conducted by Marco & García-Guerrero (2020) highlights that overcrowding stems from the predominant reliance on imprisonment policies as the primary solution to crime, thereby stifling the emergence of alternative punishments. Limoncelli et al. (2020) further assert that overcrowding is a consequence of the widespread imposition of mass imprisonment sentences on law offenders, coupled with erroneous application of laws. These findings are corroborated by Fadhil (2021) research, which underscores the significant contribution of excessive punishment and criminalization to the burgeoning inmate population in correctional facilities. Collectively, these studies suggest that overcrowding predominantly arises from the implementation of legal frameworks that prioritize punitive measures over rehabilitation. Many legal infractions that could feasibly be addressed through non-custodial methods are instead adjudicated in courts, resulting in decisions favoring incarceration.

Indonesia stands as one of the countries grappling with high occupancy rates within its correctional institutions, often leading to a state of overcrowding. According to data released by the Indonesian Directorate General of Corrections, Indonesia's correctional facilities possess a capacity to house 135,900 individuals. However, the stark reality reveals a population of 266,216 inmates occupying this space, indicating a density exceedingly double the designated capacity. This staggering overcrowding has been a catalyst for numerous incidents. The prevalence of unrest and riots within overcrowded correctional institutions can be attributed to the imbalance between the inmate and officer populations, shifting the focus of officers from rehabilitation efforts to maintaining security and order within the facility. Moreover, the inability to accommodate the influx of inmates with adequate facilities and access to rehabilitation programs further exacerbates tensions within the correctional environment [12].

The long-term negative ramifications and potential of overcrowding within correctional institutions demand a multifaceted examination that encompasses various perspectives. A thorough comprehension of the underlying causes of overcrowding is imperative. Central to this understanding is an analysis of the role of policy in shaping the direction and objectives of criminal law enforcement by law enforcement agencies, society, and governmental policymakers [13]. By delving into the intricacies of punishment politics and the policies governing the implementation of criminal law in Indonesia, it is envisaged that suitable and tangible solutions can be devised to address overcrowding, which is an indirect consequence of the intricate landscape of law enforcement in the country.

## **2. THE DEVELOPMENT OF CRIMINAL LAW AND POLITICS IN INDONESIA**

The criminal law system is an integral aspect of society, intimately intertwined with the fabric of people's lives. As societal dynamics evolve, so too does the criminal law framework. In Indonesia, the criminal law system traces its origins to the Dutch East Indies government, encompassing a set of principles and regulations governing sanctions or punishment for violations or unlawful acts. Essentially, criminal law entails the imposition of specific penalties or suffering in response to transgressions against established laws and norms.

The implementation of criminal law should always prioritize human values, ensuring that sanctions are proportionate to the severity of the offense committed. In Indonesia's legal system, imprisonment is frequently employed as the primary form of punishment. While intended to serve as both a deterrent and a path to rehabilitation for offenders, the swelling population within correctional institutions has begun to overshadow its intended benefits. Imprisonment now yields more negative consequences than positive ones, including loss of individual freedom,

heightened risk of depression, and increased exposure to criminal networks, thereby fostering a cycle of criminality. Moreover, the pervasive reliance on imprisonment fails to account for the diverse nature of offenses committed by convicts, resulting in a one-size-fits-all approach that undermines the effectiveness of rehabilitation efforts. The overcrowded and understaffed conditions within correctional facilities further impede the ability of correctional officers to effectively monitor and address the behavior of inmates. Consequently, rather than serving as centers for rehabilitation, penitentiary institutions in Indonesia have regrettably earned a reputation as "criminal schools," failing to fulfill their intended role in fostering genuine behavioral improvement among inmates [14].

The unchecked proliferation of inmates within correctional institutions, coupled with the myriad negative repercussions, underscores the imperative to dissect the underlying factors contributing to overcrowding in Indonesia. One significant driver is the implementation of stringent criminal policies in the aftermath of the 1998 riots. Following these tumultuous events, Indonesia introduced a new Criminal Code, which expanded the scope of criminal regulations significantly. This revamped code introduced 1,601 new legal violations, of which 738 warranted sentences exceeding five years, mandating detention. Consequently, numerous infractions previously categorized as administrative violations were reclassified as criminal offenses, exacerbating the influx of individuals into correctional facilities.

Furthermore, several laws and regulations pertaining to narcotics were enacted without due consideration for their downstream impacts, notably overcrowding. In 2009, Indonesia introduced a narcotics law encompassing regulations addressing a wide spectrum of narcotics-related issues, spanning from consumption, possession, distribution, and production to misuse. The implementation of this law not only introduced more severe penalties but also featured ambiguous provisions, leading to varying penalties for similar offenses. Moreover, the determination of the articles used as legal grounds for sentencing depends on the interpretation of investigators and public prosecutors. Consequently, there has been a surge in the number of individuals convicted of narcotics-related crimes or violations of the law incarcerated in correctional institutions, exacerbating the issue of overcrowding.

The Criminal Code (KUHP) in Indonesia currently recognizes only three types of punishment: imprisonment, fines, and the death penalty. However, the predominant recourse to imprisonment as the primary form of punishment has posed challenges for law enforcement officials in selecting the most appropriate penalties, often leading to imprisonment regardless of the nature and context of the offense. There is a pressing need for alternative forms of punishment that can be tailored to the specific circumstances of each law violation [15], [16], [17]. For instance, victimless crimes such as narcotics abuse and gambling, which do not directly harm others, should not necessarily result in imprisonment but could be met with fines instead. In such cases, perpetrators typically require rehabilitation rather than incarceration. However, the imposition of fines must be carefully formulated to prevent abuse, potentially through the implementation of income-based fines to ensure equitable punishment based on financial means. This approach would promote a more nuanced and effective justice system that addresses the underlying needs of both offenders and society at large.

Another significant factor driving the increase in the inmate population within correctional institutions is the prolonged period of pre-trial detention [18], [19], [20]. Overcrowding is frequently compounded by pre-trial detainees through two main avenues. Firstly, suspects awaiting trial are often held in correctional facilities alongside convicted criminals, leading to an inefficient investigation process that extends the duration of their detention beyond what is necessary. According to the Indonesian criminal law system, investigators are permitted to conduct inquiries for up to 20 days, which can be extended to a maximum of 60 days (Article 24 of the Criminal Procedure Code). Subsequently, the legal proceedings progress to the trial phase, which can last for a maximum of 50 days (Article 25 of the Criminal Procedure Code). The backlog of cases awaiting investigation and the protracted judicial process have the potential to prolong a suspect's detention to a maximum of 110 days, irrespective of the severity of the alleged crime. Moreover, the imposition of detention periods during the appellate stage, as outlined in Articles 26-28 of the Criminal Procedure Code, further exacerbates the situation.

From this description, it can be stated that legal politics and legal policies contained in the regulations implemented in the Indonesian legal system have collectively contributed to the potential to increase the number of inmates or detainees in correctional institutions. The lengthy and unnecessary justice system has created the potential for huge losses, not only for law violators, but also for the state which is the source of financing for the implementation of the legal and judicial system in Indonesia, as well as the source of financing for the management of penitentiary institutions.

### **3. AVAILABLE SOLUTIONS TO PREVENT OVERCROWDING IN INDONESIAN PRISONS**

In addressing overcrowding within correctional institutions, Indonesia has implemented various approaches to manage these facilities effectively. One prioritized approach involves the enactment of Regulation of the Minister of Law and Human Rights Number 11 of 2017, which outlines the Grand Design for Handling Overcrowding in State Detention Centers and Correctional Institutions. According to this ministerial regulation, the management of overcrowding must be approached from multiple perspectives.

The plethora of laws and regulations in Indonesia often contribute to the escalation of inmate populations in correctional institutions, as they predominantly prescribe imprisonment as the primary form of punishment without sufficient provisions for alternative penalties. Consequently, individuals convicted of crimes are left with limited options for reparation other than serving time behind bars. Through Regulation Number 11/2017 issued by the Ministry of Law and Human Rights, it is envisioned that legislative regulations can undergo transformation, shifting from mere tools for sending offenders to correctional facilities to instruments capable of curbing inmate placements, redirecting traditional punishments towards more humane and productive alternatives, expediting legal processes to ensure judicial certainty, and enhancing the frequency and quality of productive activities within correctional institutions to facilitate social rehabilitation. By adopting these measures, the recurrence of overlapping regulations that facilitate the incarceration of offenders, particularly those implicated in victimless crimes, can be mitigated.

Correctional institutions face numerous challenges, including limitations in their institutional aspects [21], [22]. The organizational structure often comprises officers with limited capacity and capability, necessitating a paradigm shift in governance and organizational formation to meet evolving needs. Managing correctional institutions with overcrowded conditions, often exceeding 100% capacity, requires a complex and adaptable organizational structure. Significant enhancements to organizational structures and operational procedures, especially in overcrowded facilities, must be tailored to the circumstances to optimize outputs irrespective of the challenging conditions prevailing in correctional institutions.

Overcrowding has presented considerable challenges for prison administrators, particularly concerning the availability of facilities and infrastructure. The overcrowded conditions in correctional institutions often hinder the utilization of planned facilities and infrastructure designed for an optimal inmate capacity. Given the prevalence of overcrowding, there is a pressing need for a systematic and structured re-evaluation and planning process to address the deficiencies in facilities and infrastructure. This entails conducting analytical studies and comprehensive re-mapping to formulate a master plan that aligns with the optimal requirements for facilities and infrastructure within correctional institutions [6], [23], [24]. By undertaking such measures, administrators can effectively address the pressing needs stemming from overcrowding while ensuring the efficient utilization of available resources.

In addition to the physical facilities of correctional institutions, human resources (HR) also play a crucial role in achieving the goals of community development within these facilities. Therefore, concerted efforts are necessary to enhance both the quality and quantity of human resources through the implementation of effective HR management practices. Proper HR management entails a comprehensive transformation of human resources within correctional institutions, encompassing various stages of HR management processes including workload assessment, determination of human resource needs, recruitment, screening, training, performance-based rewards and sanctions, and termination procedures. Through these measures, correctional institutions can ensure that their workforce comprises competent, qualified, and professional individuals with optimal work ethics and quality of work. Additionally, these human resources should possess a thorough understanding of their role as caretakers and protectors of inmates and other stakeholders. This holistic approach to HR management is essential for fostering a conducive and safe environment within correctional institutions, ultimately contributing to the broader goals of community development and rehabilitation.

With the implementation of this grand design, enhancements to the Indonesian penitentiary system, particularly in addressing overcrowding, will not be limited to downstream interventions that merely address symptoms without addressing underlying issues. Instead, improvements will be initiated upstream, starting with reforms to the legal system itself. This approach aims to empower law enforcement authorities to devise proactive and productive solutions to prevent and address law violations effectively, thereby reducing the reliance on correctional institutions as the sole endpoint of law enforcement in Indonesia.

In line with this grand design, the concept of assimilation, exemplified by open prisons or Community-based Correction systems, is introduced. This innovative approach prioritizes community involvement in the rehabilitation and reintegration of inmates, aiming to address the root causes of legal deviations. Empirical data supports this concept, showcasing its effectiveness in fostering community engagement and facilitating the restoration of individuals who have committed legal infractions. By embracing such progressive approaches, Indonesia can move towards a more holistic and effective criminal justice system that emphasizes prevention, rehabilitation, and community involvement, thereby reducing the burden on correctional institutions and promoting long-term societal well-being [25], [26].

In addition to transforming the penitentiary system, Regulation Number 11/2017 also advocates for the implementation of assimilation for all inmates, except for those convicted of specific offenses such as narcotics abuse with imprisonment exceeding five years, terrorism, corruption, insulting the state, serious human rights violations, organized crime, and certain crimes committed by child prisoners such as murder, violent theft, immoral acts, violations against children, and recidivism. The implementation of the assimilation policy has led to a reduction in the inmate population by over 38 thousand individuals during the period of 2019-2020. However, despite this effort, overcrowding remains prevalent in many correctional institutions across Indonesia. Despite the reduction in the inmate population, the impact on overcrowding has not been significant enough, as numerous correctional facilities still exceed their designated housing capacities. Therefore, while the assimilation policy has yielded some positive outcomes in terms of reducing the inmate population, further measures may be necessary to effectively address the issue of overcrowding in correctional institutions. This could involve comprehensive reforms in the legal system, as well as continued efforts to implement alternative sentencing measures and enhance rehabilitation programs to alleviate the strain on correctional facilities.

Overcrowding in correctional institutions highlights that the current facilities are insufficient to effectively address crime rates and are primarily serving as holding grounds for criminals. While one solution could be constructing new correctional facilities, this approach is fraught with challenges, including the substantial funding required and the potential for future overcrowding issues. An alternative approach to meeting the demand for correctional facilities is through privatization. Privatizing correctional institutions involves contracting private entities to manage and operate these facilities. Proponents argue that privatization can bring efficiency and innovation to the management of correctional institutions, potentially alleviating overcrowding by expanding capacity and improving resource allocation [27]. However, privatization also raises concerns regarding the prioritization of profit over the welfare of inmates, potential conflicts of interest, and accountability issues. Additionally, there is ongoing debate about the effectiveness and ethical implications of privatizing essential services such as corrections. Ultimately, whether privatization is a viable solution to addressing overcrowding in correctional institutions requires careful consideration of various factors, including cost-effectiveness, accountability, and the protection of inmates' rights and well-being. Any decision regarding privatization should be made with a thorough understanding of its potential impacts and implications for the criminal justice system.

In addition to efforts to expand correctional institution facilities, addressing overcrowding requires urgent action through the development and implementation of decriminalization and depenalization policies, particularly for drug addicts who constitute a significant portion of the inmate population. Numerous studies have highlighted that incarcerating drug addicts exacerbates overcrowding in correctional institutions and poses health risks to other inmates. Drug addiction is a complex issue that necessitates a comprehensive approach centred on rehabilitation rather than punishment [28], [29], [30]. By decriminalizing and depenalizing drug addiction, individuals struggling with substance abuse can receive the support and treatment they need to overcome their addiction and reintegrate into society as productive members. This approach not only reduces the burden on correctional institutions but also promotes public health and addresses the underlying causes of drug-related offenses. Furthermore, investing in proper rehabilitation programs and community-based treatment options for drug addicts is essential. These programs should focus on providing comprehensive support, including medical treatment, counselling, vocational training, and social services, to address the complex needs of individuals struggling with addiction. By prioritizing decriminalization, depenalization, and rehabilitation over incarceration for drug addicts, governments can effectively alleviate overcrowding in correctional institutions, promote public health, and foster positive outcomes for individuals and communities affected by substance abuse.

Minor law violators, such as those involved in theft cases with assets valued at less than 5 million Rupiah, should not be subjected to imprisonment in correctional institutions, as this approach may exacerbate existing issues and lead to new challenges. Instead, implementing restorative justice programs that facilitate dialogue and reconciliation between perpetrators and victims can offer more effective and humane solutions to addressing minor offenses. Restorative justice programs aim to bring together offenders and victims to discuss the impact of the offense, identify the root causes of the behavior, and work towards finding mutually agreeable resolutions without resorting to formal legal proceedings. By prioritizing dialogue and reconciliation over punishment, restorative justice programs have shown promise in reducing recidivism rates and promoting healing and restoration within communities. Moreover, there is evidence demonstrating the success of restorative justice approaches in deterring future offenses and fostering meaningful reconciliation between victims and perpetrators. By empowering individuals to take responsibility for their actions and actively participate in the resolution process, restorative justice initiatives can contribute to broader social improvements and strengthen community bonds. Therefore, investing in restorative justice programs for minor law violations can not only help alleviate overcrowding in

correctional institutions but also promote a more equitable and compassionate approach to addressing crime and promoting positive outcomes for both offenders and victims alike.

In general, the guidelines for pre-trial detention stipulate that it should be used as a last resort and for the shortest duration possible. These guidelines are even more stringent for child suspects. However, several studies have highlighted instances of abuse of authority leading to prolonged pre-trial detention periods. Indonesia has been identified in one study as a country facing significant challenges in this regard. The lack of alternatives to pre-trial detention, such as cash bail, passport confiscation, or electronic monitoring, incentivizes judges to resort to detention as the default option for lawbreakers. Furthermore, the protracted duration of pre-trial detention is compounded by the lengthy investigation and trial preparation processes, which contribute to the overall slowdown of the legal system. Addressing these issues requires comprehensive reforms aimed at improving the efficiency and fairness of the pre-trial detention system. This could involve introducing alternative measures to detention, streamlining investigation and trial procedures, and enhancing judicial oversight to prevent abuses of authority. By implementing such reforms, Indonesia can ensure that pre-trial detention is utilized judiciously and in accordance with human rights standards, while also expediting the legal process and reducing the burden on correctional institutions.

Several countries have successfully implemented alternatives to the pre-trial detention system, leading to significant reductions in the number of detainees and alleviating overcrowding in correctional institutions. In South America, for instance, some countries have revamped their pre-trial systems to minimize the frequency of detention, resulting in a notable decrease in detention rates [31], [32]. Similarly, in India, research on the justice system has revealed efforts to minimize pre-trial detention, particularly for minor crimes, with the aim of reducing the inmate population in correctional facilities [33], [34]. Additionally, pre-trial detention has been identified as prone to misuse by certain law enforcement agencies, especially in high-profile cases or those garnering public attention. Research conducted in Germany, focusing on decisions made by the Hamburg High Court, sheds light on the effectiveness of alternatives to pre-trial detention. Among the decisions not to detain 27 suspects, only 20% of them were absent during trial proceedings [35], [36]. This highlights the importance of considering factors such as community ties, behavioural assessments, and the severity of the crime when determining whether to implement pre-trial detention. By adopting a risk-based approach, low-risk suspects can be identified and granted alternatives to detention, thereby mitigating the strain on correctional institutions and ensuring a fair and efficient justice system.

Indonesia could address overcrowding in correctional institutions by adopting a multifaceted approach that combines various alternative solutions. These strategies include:

- **Privatization of Correctional Institutions:** Implementing a privatization model for standardized correctional facilities can bring efficiency and innovation to the management of these institutions, potentially expanding capacity and improving resource allocation.
- **Efficiency in the Investigation and Judicial Process:** Streamlining the investigation and judicial processes can expedite legal proceedings, reducing the duration of pre-trial detention and alleviating overcrowding in correctional institutions.
- **Transformation of the Justice and Detention System:** Shifting towards a more community-based correctional system, including open prisons and assimilation programs, can provide effective alternatives to conventional incarceration, promoting rehabilitation and reducing recidivism rates.
- **Utilization of Assimilation and Parole:** Implementing assimilation and parole programs can facilitate the reintegration of offenders into society while reducing the burden on correctional facilities.
- **Replacement of Pre-trial Detention:** Replacing pre-trial detention with alternatives such as bail, electronic monitoring, or mandatory reporting with psychological assessment requirements can prevent unnecessary incarceration and mitigate overcrowding.
- **Community Engagement and Risk Assessment:** Engaging communities in the screening process and conducting risk assessments can help identify low-risk suspects who can safely be managed outside of correctional institutions, thereby reducing overcrowding while ensuring public safety.

By adopting a combination of these alternative solutions, Indonesia can effectively address the challenges of overcrowding in correctional institutions while promoting rehabilitation, ensuring justice, and enhancing public safety. However, it is crucial to implement these strategies with careful consideration of their potential impacts and in line with human rights principles and legal standards.

#### 4. CONCLUSIONS

The interplay of legal politics and policies in Indonesia continues to contribute to the potential increase in the incarcerated population, ultimately leading to overcrowding in correctional institutions. The systemic sequence of activities within the justice system poses significant challenges, resulting in adverse consequences for both society

and the state, particularly in terms of the financial burden on law enforcement institutions, including correctional facilities. A fundamental issue within the Indonesian legal system lies in its repressive and punitive nature, rather than serving a rehabilitative function. To address this, a comprehensive approach to legal formulation and implementation is necessary. This could involve adopting a restorative justice approach, promoting non-discrimination, depenalization, and encouraging out-of-court settlements that prioritize restoring the situation for all parties involved—perpetrators, victims, and the community at large. In the short term, implementing extensive and widespread assimilation policies can help alleviate overcrowding by reintegrating individuals back into society. Additionally, community involvement is essential in post-assimilation supervision to ensure successful reintegration and reduce the risk of recidivism. By adopting these approaches, Indonesia can work towards transforming its legal system into one that prioritizes rehabilitation, promotes fairness, and effectively addresses overcrowding in correctional institutions, ultimately contributing to a more just and equitable society.

Inpatient Rates:

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