

## NEWSLETTER

28 January 2026

# NAVIGATING CORPORATE CRIME UNDER INDONESIA'S NEW CRIMINAL CODE AND CRIMINAL PROCEDURAL CODE

### *An Overview*

On January 2, 2026, after decades of debate and drafting, Indonesia's criminal justice system has finally entered a new chapter. After long relying on a criminal code inherited from the colonial era, *Wetboek van Strafrecht (Old Criminal Code)*, Indonesia has now put into force a criminal code formulated and enacted by the Republic itself through Law No. 1 of 2023 on Criminal Code. The Government of Indonesia has also introduced Law No. 1 of 2026 on Adjustment of Criminal Sanctions (**Criminal Sanctions Adjustment Law**) which, among others: (i) amends certain provisions of Law No. 1 of 2023 on the Criminal Code; (ii) abolishes criminal sanctions in the form of confinement under special criminal laws and regional regulations; (iii) revises the provisions on criminal fines under special criminal laws and regional regulations by aligning them with the fine categories under Law No. 1 of 2023 on the Criminal Code; and (iv) removes minimum sentencing provisions. In this article, Law No. 1 of 2023 on Criminal Code, as amended by the Criminal Sanctions Adjustment Law, will be referred to as the "**New Criminal Code**".

The implementation of the New Criminal Code is also accompanied by the enactment of Law No. 20 of 2025 on Criminal Procedural Code (**New Criminal Procedural Code**). Together, these laws are considered a reform of Indonesia's criminal law regime, replacing the long-standing application of Law No. 8 of 1981 on the Criminal Procedural Code (**Old Criminal Procedural Code**), which had long served as the foundation of the Indonesian criminal justice system.

This client alert will further discuss corporate criminal liability as newly introduced by the New Criminal Code and the New Criminal Procedural Code.



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## Key Updates

### A. Transition from Old Criminal and Criminal Procedural Codes to New Criminal and Criminal Procedural Codes

The New Criminal Code, accompanied by the Criminal Sanctions Adjustment Law and the New Criminal Procedural Code became effective on January 2, 2026. The New Criminal Code and the New Criminal Procedural Code provide provisions to facilitate the transition to the new criminal law regime and to indicate which laws (whether the new codes, the old codes, or other applicable laws and regulations) apply at each stage of the criminal process during this transition period.<sup>1</sup>

Further, the Attorney General's Office and the Indonesian National Police have also issued a circular letter to their respective internal bodies and subordinate units to support the implementation of these provisions.<sup>2</sup> The following table outlines the applicable law at each stage of the criminal process:

| Stages of Criminal Proceedings   | Prevailing Regulations  |
|--|---|
| Criminal cases that are currently in the pre-investigation, investigation, or prosecution process, where such pre-investigation, investigation, or prosecution commenced prior to January 2, 2026. | <ul style="list-style-type: none"><li>The pre-investigation, investigation, or prosecution must be conducted in accordance with the Old Criminal Procedural Code.</li></ul> |

<sup>1</sup> Article 361 of the New Criminal Procedural Code and Article 3 paragraph (1) and Article 618 of the New Criminal Code.

<sup>2</sup> Circular Letter of the Attorney General's Office of the Republic of Indonesia No. B-5433/E/Ejp/12/2025 on the Procedures for Handling Criminal Cases during the Transitional Period following the Entry into Force of the New Criminal Code and the New Criminal Procedural Code, dated December 30, 2025 and Circular Letter of the Chief of the Criminal Investigation Agency of the Indonesian National Police No. B/I/I/RES.7.5./2026/Bareskrim on Guidelines and Directives for the Handling of Cases in relation to the Entry into Force of the Criminal Code 2023 and the Criminal Procedural Code 2025, dated January 1, 2026.

| Stages of Criminal Proceedings   | Prevailing Regulations  |
|--|---|
|  | <ul style="list-style-type: none"> <li>The criminal provisions applicable to the alleged conduct are those under the New Criminal Code, unless the criminal provisions in the Old Criminal Code or other laws and regulations are more favorable to the criminal perpetrator.</li> </ul>  |
| <p>Criminal cases in which the offense was committed prior to January 2, 2026, but the pre-investigation, investigation, or prosecution had not commenced as of January 2, 2026.</p> | <ul style="list-style-type: none"> <li>The pre-investigation, investigation, or prosecution must be conducted in accordance with the New Criminal Procedural Code.</li> <li>The criminal provisions applicable to the alleged conduct are those under the New Criminal Code, unless the criminal provisions in the Old Criminal Code or other laws and regulations are more favorable to the criminal perpetrator.</li> </ul>   |
| <p>Criminal cases that have been submitted to the court and the examination proceedings had already commenced prior to January 2, 2026.</p>  | <ul style="list-style-type: none"> <li>Such criminal cases (including any appeal and cassation process) must be examined, tried, and adjudicated in accordance with the Old Criminal Procedural Code. However, if those cases are brought for case review (<i>peninjauan kembali</i>), the examination, trial, and adjudication must be conducted with reference to the New Criminal Procedural Code.</li> <li>The criminal provisions applicable to the alleged conduct are those under the New Criminal Code, unless</li> </ul> |

| Stages of Criminal Proceedings   | Prevailing Regulations  |
|--|---|
|  | <p>the criminal provisions in the Old Criminal Code or other laws and regulations are more favorable to the criminal perpetrator.</p>   |
| <p>Criminal cases that have been submitted to the court prior to January 2, 2026, but the examination had not yet commenced as of January 2, 2026.</p> | <ul style="list-style-type: none"> <li>• Such criminal cases must be examined and adjudicated in accordance with the New Criminal Procedural Code.</li> <li>• The criminal provisions applicable to the alleged conduct are those under the New Criminal Code, unless the criminal provisions in the Old Criminal Code or other laws and regulations are more favorable to the criminal perpetrator.</li> </ul> |

## **B. Key Provisions on Corporate Criminal Liability under the New Criminal and Criminal Procedural Codes**

### *Corporate Criminal Liability*

The Old Criminal Code does not recognize a “corporation” as a criminal subject. Previously, “corporation” as a criminal subject and corporate criminal liability were previously regulated only through a Supreme Court regulation<sup>3</sup> and various sectoral laws (such as, the Anti-Corruption Law,<sup>4</sup> the Environmental Law,<sup>5</sup> etc.).

<sup>3</sup> Supreme Court Regulation No. 13 of 2016 on Procedures to Settle Criminal Acts Committed by Corporations.

<sup>4</sup> Law No. 31 of 1999 on Eradication of The Crime of Corruption as amended by Law No. 20 of 2001.

<sup>5</sup> Law No. 32 of 2009 on Environmental Protection and Management as amended by Government Regulation No. 2 of 2022.

Conversely, the New Criminal Code recognizes a "Corporation" as a criminal subject and provides clarity on the definitions, relevant parties, and conditions for corporate criminal liability.

The New Criminal Code and the New Criminal Procedural Code define "Corporation" extensively as an organized group of people and/or assets which includes legal entities in the form of limited liability company, foundation, cooperative, state, regional-owned, and/or village-owned enterprises (including any equivalent), as well as associations—whether having the status of legal entity or not, business partnerships in the form of a firm, limited partnership, or any equivalent in accordance with the provisions of laws and regulations.<sup>6</sup>

Articles 46 and 47 of the New Criminal Code provide that a crime will be deemed to be committed by a Corporation (**Corporate Crime**) if that act is perpetrated by:

- (a) member(s) of the management who has a functional position within the corporation, namely, a person having the authority to represent, decide, and supervise the Corporation, including those in a position to give instruction to commit, participate, persuade/mobilize others to perform, or assist the performance of a crime, within the scope of the business or activities of the Corporation, individually or jointly;
- (b) any person who is based on a work relationship or any other relationship (such as, a temporary working contract) acts for and on behalf of the Corporation or acts for the interest of the Corporation, within the scope of the business or activities of the Corporation, individually or jointly; or
- (c) any controlling party, order-giver, or beneficial owner of the Corporation who is outside of the organizational structure and yet, retains control of the Corporation.

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<sup>6</sup> Article 45 paragraphs (1) and (2) of the New Criminal Code and Article 1 paragraph (55) of the New Criminal Procedural Code.

Furthermore, the New Criminal Code provides five conditions under which a Corporation may be subject to criminal liability, namely:<sup>7</sup>

- (a) the Corporate Crime is included in the scope of business or activity as determined in the articles of association and other applicable provisions of the Corporation;
- (b) the Corporate Crime benefits the Corporation unlawfully;
- (c) the Corporate Crime is accepted as a corporate policy;
- (d) the Corporation fails to take the necessary measures to take prevention activities, mitigate any greater impact caused by the crime, and to ensure compliance with the prevailing laws to prevent the Corporate Crime; and/or
- (e) the Corporation allows such Corporate Crime to occur.

The type of criminal sanctions that can be imposed on Corporations is primarily in the form of a fine.<sup>8</sup> However, the New Criminal Code also provides additional sanctions, which include: (i) payment of compensation; (ii) remediation of harm resulting from the Corporate Crime; (iii) performance of neglected obligations; (iv) fulfillment of customary obligations; (v) funding of workforce training; (vi) forfeiture of assets or proceeds obtained from the Corporate Crime; (vii) publication of the court decision; (viii) revocation of certain licenses; (ix) permanent prohibition from carrying out certain acts; (x) closure of all or part of the Corporation's place of business and/or business activities; (xi) suspension of all or part of the Corporation's business activities; and (xii) dissolution of the Corporation.<sup>9</sup>

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<sup>7</sup> Article 48 of the New Criminal Code.

<sup>8</sup> Article 119 of the New Criminal Code.

<sup>9</sup> Article 120 of the New Criminal Code.

Amendments to Article 120 of the New Criminal Code introduced under the Criminal Sanctions Adjustment Law further regulate the implementation of the above additional sanctions, as follows:<sup>10</sup>

| Additional Sanctions   | Implementation   |
|--|--|
| <ul style="list-style-type: none"> <li>• Revocation of certain license permits.</li> <li>• Full or partial closure of the Corporation's business place and/or activities.</li> <li>• Suspension of all or partial of the Corporation's business activities.</li> </ul>                   | <p>Imposed for a maximum period of two years.</p>  |
| <ul style="list-style-type: none"> <li>• Payment of compensation.</li> <li>• Remedial measures for the crime committed.</li> <li>• Performance of neglected obligations.</li> <li>• Implementation of local customary obligations.</li> <li>• Funding for workforce training.</li> </ul> | <p>If these additional sanctions are not performed, the assets or income of the Corporation may be seized and auctioned by the public prosecutor to fulfill the unperformed additional sanctions.</p>  |
| <ul style="list-style-type: none"> <li>• Forfeiture of assets or proceeds obtained from the crime.</li> </ul>  | <p>If this additional sanction is not performed, as long as the additional sanction is imposed in the form of forfeiture of property that was not seized as referred to in Article 92 (1) of the New Criminal Code, other corporate assets of equivalent value may be forfeited.</p> |
| <ul style="list-style-type: none"> <li>• Payment of the costs of publishing a court decision.</li> </ul>   | <p>If such payment is not made, corporate assets of equivalent value may be forfeited.</p>   |
| <ul style="list-style-type: none"> <li>• Fulfillment of customary obligations.</li> </ul>  | <p>If such obligations are not fulfilled, a replacement</p>  |

<sup>10</sup> Article VII Number 20 of Criminal Sanctions Adjustment Law.

| Additional Sanctions | Implementation  |
|----------------------|---|
|                      | compensation amounting to IDR200,000,000 will be imposed. If such compensation remains unfulfilled, the assets or income of the Corporation may be seized and auctioned by the public prosecutor to satisfy the outstanding compensation. |

It is important to note that Article 132 of the New Criminal Code provides that the authority to prosecute a Corporation does not lapse in the event of: (i) bankruptcy; (ii) a change of name; (iii) merger; (iv) consolidation; (v) acquisition; (vi) spin-off; or (vii) dissolution. In line with this, Article 330 of the New Criminal Procedural Code provides that a Corporation may remain subject to criminal liability in the event of a merger, consolidation, spin-off, or dissolution. Further implementing provisions will be issued under a government regulation to regulate the implementation of these provisions.

*Liability of Corporate Responsible Persons*

Article 49 paragraph (1) of the New Criminal Code provides that criminal liability for Corporate Crime is imposed on the Corporation. Further, Article 49 paragraph (2) of the New Criminal Code stipulates that corporate criminal liability may also be imposed on members of management who hold functional positions, persons who give orders, controlling persons, and/or beneficial owners of the Corporation (**Corporate Responsible Persons**).

Based on this construction, although Article 46 of the New Criminal Code classifies criminal offenses committed by employees as Corporate Crimes, Article 49 of the New Criminal Code does not impose corporate criminal liability on employees. As a result, it could be argued that the New Criminal Code effectively limits the personal criminal liability of employees for Corporate Crime committed in the course of their employment.

However, the New Criminal Code does not expressly regulate the circumstances under which corporate criminal liability is to be imposed on Corporate Responsible Persons.

Referring to the General Elucidation of the New Criminal Code, it is stated that criminal liability may be borne by the Corporation, cumulatively by Corporation and its Corporate Responsible Persons, or solely by Corporate Responsible Persons. However, the substantive provisions of the New Criminal Code do not clearly regulate the circumstances under which corporate criminal liability:

- (a) will be imposed in full on the Corporation under a vicarious liability approach;
- (b) will be shared between the Corporation and its Corporate Responsible Persons, and whether the imposition of sanctions on the Corporation will affect the sanctions that will be imposed on its management, and vice versa; or
- (c) will be imposed exclusively on the Corporate Responsible Persons.

As a result, the allocation of liability between the Corporation and Corporate Responsible Persons is likely to become a contested and highly debated issue in judicial proceedings.

#### *Applicability of Corporate Criminal Liability under Special Laws*

As noted above, prior to the enactment of the New Criminal Code, several laws had already regulated corporate criminal liability, including, among others: (i) Article 20 of the Anti-Corruption Law; (ii) Article 90 of the Child Protection Law; (iii) Article 6 of the Anti-Money Laundering Law; and (iv) Articles 116–119 of the Environmental Law.

In this regard, Article 622, as the closing provision of the New Criminal Code, does not revoke the provisions of the specific laws referred to above. Accordingly, the corporate criminal liability provisions under such special laws remain valid and legally binding.

However, Article 187 of the New Criminal Code provides that the provisions under Chapters I to V of Book One of the New Criminal Code (which include provisions on corporate criminal liability) also apply to crimes regulated under other laws, “unless otherwise provided *by Law*”.

The elucidation of Article 187 of the New Criminal Code clarifies that the phrase “*by Law*” refers only to laws that regulate crimes that have special characteristics, such as:

- (a) offenses with a significant victimization impact;
- (b) offenses that are often transnational and organized in nature (transnational organized crime);
- (c) offenses governed by special procedural rules;
- (d) offenses that frequently deviate from the general principles of substantive criminal law;
- (e) offenses supported by specialized law enforcement institutions with specific powers (such as the Corruption Eradication Commission, the National Narcotics Agency, and the National Commission on Human Rights);
- (f) offenses supported by various international conventions, whether ratified or not; and
- (g) offenses that are considered particularly serious (*super mala per se*) and strongly condemned by society.

Such offenses generally refer to crimes formulated under the chapter on “special crimes” in the New Criminal Code, which includes, among others, corruption, terrorism, and money laundering. In addition, the exception also applies to the amount of criminal fines stipulated under laws governing offenses that have the potential to cause significant losses to the state or society.

Nevertheless, these provisions may still give rise to legal uncertainty in determining the applicability of Chapters I to V of Book One of the New Criminal Code (which consists of provisions on corporate criminal liability) against crimes

regulated in special laws that are not considered “special crimes” in the New Criminal Code. Accordingly, further implementation or clarification through, among others, Supreme Court Regulations or Attorney General Regulations remains to be seen.

## **C. New Legal Mechanism Introduced in the New Criminal Procedural Code**

### *Deferred Prosecution Agreement*

New Criminal Procedural Code introduces the Deferred Prosecution Agreement (DPA) as a mechanism allowing the public prosecutor to defer prosecution in cases involving corporations as criminal perpetrators, with the objective of promoting legal compliance, restoring losses arising from criminal acts, and efficiency in the criminal justice system.<sup>11</sup>

A suspect, defendant, or legal counsel may file a petition for DPA during the prosecution stage, prior to the case being brought before the court, in which the public prosecutor will accept or reject such a petition by considering justice, the interests of the victim, and the defendant’s compliance with the applicable laws and regulations.<sup>12</sup> A DPA will later be examined before the court for judge’s approval after considering its eligibility and validity.<sup>13</sup> However, the New Criminal Procedural Code is silent on the timeframe within which the public prosecutor must decide whether to grant or reject a DPA petition, and also does not prescribe any timeframe for the court to issue a decision approving or rejecting the proposed DPA.

The terms provided in the DPA may include: (i) payment of compensation or restitution to the victim; (ii) implementation of legal compliance programs or improvements of anti-corruption corporate governance; (iii) reporting obligations and cooperation

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<sup>11</sup> Article 1 paragraph (17) and Article 328 paragraphs (1) and (2) of the New Criminal Procedural Code.

<sup>12</sup> Article 328 paragraphs (3) and (4) of the New Criminal Procedural Code.

<sup>13</sup> Article 328 paragraphs (5) to (11) of the New Criminal Procedural Code.

with law enforcement authorities during the period of deferred prosecution; or (iv) other corrective measures deemed necessary by the public prosecutor.<sup>14</sup>

If all of the obligations under the DPA are fulfilled within the specified period, the case may be discontinued without further prosecution by virtue of a court order.<sup>15</sup>

### *Restorative Justice*

Restorative Justice is defined as an approach to handling criminal cases which is done by involving the victim, the offender, and their respective families and/or other relevant parties, with the aim of restoring the situation to its original state through measures such as forgiveness, return of property obtained from the criminal act, reimbursement of medical/psychological treatment costs, reparation of damage caused, and compensation for any losses caused by the criminal act.<sup>16</sup>

This mechanism may be applied at the stages of pre-investigation, investigation, prosecution, or trial and may be initiated upon: (i) a petition from the perpetrators (or their family) and/or the victims (or their family); or (ii) an offer from the investigators, public prosecutors, or judges.<sup>17</sup>

Restorative Justice must be formalized in an agreement and fulfilled within a period of seven days.<sup>18</sup> Upon the completion of restorative measures, the criminal report or complaint will be revoked, and the case will be terminated by a court order.<sup>19</sup>

This measure may only be applied to crimes which are: (i) punishable only by a fine of maximum IDR50,000,000 or by imprisonment for a maximum term of five years; (ii) conducted for the first time; and/or (iii) not a repeated offense, except where the prior judgment imposed sanction in a form of fine or was

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<sup>14</sup> Article 328 paragraph (12) of the New Criminal Procedural Code.

<sup>15</sup> Article 328 paragraph (13) of the New Criminal Procedural Code.

<sup>16</sup> Article 1 paragraph (21) and Article 79 paragraph (1) of the New Criminal Procedural Code.

<sup>17</sup> Article 79 paragraph (8) and Article 81 paragraph (1) of the New Criminal Procedural Code.

<sup>18</sup> Article 79 paragraphs (2) and (3) of the New Criminal Procedural Code.

<sup>19</sup> Article 79 paragraphs (4) and (5) of the New Criminal Procedural Code.

committed due to a negligence.<sup>20</sup> Moreover, this measure is excluded for certain crimes, including crimes against state security, terrorism, corruption, sexual violence, offenses punishable by five years' imprisonment or more (except if committed due to negligence), crimes against life, offenses with mandatory minimum sentences, serious public harm offenses, and narcotics (except if the perpetrator is a user or abuser).<sup>21</sup>

Restorative Justice may be applied to Corporations as criminal perpetrators, provided that: (i) the offense is committed for the first time; (ii) the Corporation provides compensation or restitution to the victim and/or compensation to the State; and/or (iii) other corrective measures deemed necessary by the Investigator are conducted.<sup>22</sup> However, these provisions are regulated under the pre-investigation and investigation section of the Chapter on Corporations and do not further regulate their application during the prosecution or trial stages. Nonetheless, as the Chapter on Restorative Justice does not exclude the availability of this mechanism for Corporations during the prosecution or trial stages, Restorative Justice should, in principle, remain available to Corporations, provided that the relevant offense and applicable requirements are satisfied.

### *Plea Bargain*

The New Criminal Procedural Code introduces Plea Bargain mechanism, in which a defendant may plead guilty to a crime and cooperate in the examination process by submitting evidence supporting such an admission, in return for a reduction in sentence.<sup>23</sup> Plea Bargain must be submitted in a specific hearing before the commencement of the main hearing and must be made in a written agreement between the public prosecutor and the defendant with the judge's approval.<sup>24</sup>

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<sup>20</sup> Article 80 paragraph (1) of the New Criminal Procedural Code.

<sup>21</sup> Article 82 of the New Criminal Procedural Code.

<sup>22</sup> Article 327 paragraph (6) of the New Criminal Procedural Code.

<sup>23</sup> Article 1 paragraph (16) of the New Criminal Procedural Code.

<sup>24</sup> Article 78 paragraphs (4) and (6) of the New Criminal Procedural Code.

Plea Bargain is subject to strict conditions, namely that the offense is committed for the first time, is punishable by a maximum term of imprisonment of five years or a fine not exceeding IDR500,000,000, and/or the defendant is willing to pay compensation or restitution.<sup>25</sup>

While the New Criminal Procedural Code does not expressly state whether Plea Bargain is available to Corporations, the relevant provisions are set out under the chapter on “Prosecution” and apply to defendants. As Corporations constitute criminal subjects and may be named as defendants, Plea Bargain should likewise be available to corporate defendants.

#### *Settlement Fine*

One of the authorities of the public prosecutor stipulated in the New Criminal Procedural Code is to impose a Settlement Fine. Article 66 of the New Criminal Procedural Code stipulates that the Settlement Fine is a mechanism for settling cases outside of court by paying a fine approved by the Attorney General in accordance with the provisions of the laws and regulations.

The elucidation of Article 66 of the New Criminal Procedural Code provides that the Settlement Fine can be used for economic crimes, including tax crimes, customs crimes, or other economic crimes based on the law.

In this case, the procedures for implementing Settlement Fine are further regulated in government regulations. However, to date, such a regulation has yet to be issued.

The New Criminal Procedural Code is not explicit as to whether settlement fines may be imposed on Corporations. However, as the settlement fine regime is set out under the “Prosecution” chapter and is intended for economic crimes (including tax and customs offenses), it is reasonable to interpret that Settlement Fine should also be available for corporate defendants.

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<sup>25</sup> Article 78 paragraph (1) of the New Criminal Procedural Code.

## **Conclusion**

The enactment of the New Criminal Code and the New Criminal Procedural Code marks a new era in Indonesia's criminal law regime.

The New Criminal Code replaces the long-serving Old Criminal Code inherited from the colonial era. Importantly, the New Criminal Code expressly incorporates corporate crime into the criminal code itself, whereas previously, the Old Criminal Code only recognizes natural person (*natuurlijk persoon*) as criminal subject and provisions pertaining to corporation as criminal subject were only found in special laws.

In its implementation, however, the New Criminal Code does not constitute a full codification of criminal law as once envisioned during the 2019–2020 reform period, nor does the New Criminal Code comprehensively revoke general provisions or criminal provisions contained in laws governing special crimes. This approach inevitably gives rise to a number of legal questions, which are expected to be addressed over time through implementation practice or further clarification, including, among others, through Supreme Court Regulations or Attorney General Regulations.

The New Criminal Procedural Code also introduces several new mechanisms that have the potential to simplify the criminal justice process, including DPA, Restorative Justice, Plea Bargain, and Settlement Fine. These mechanisms are expected to contribute to a more effective criminal justice process compared to the previous framework. In addition, the strengthening of the rights of suspects and defendants is expected to promote fairer procedural safeguards within the criminal justice process.

As corporate crime and corporate criminal liability are among the most highlighted topics in this new era of Indonesia's criminal law framework, corporation need to tread carefully in conducting business activities and transactions. Now, more than ever, corporations should prioritize reassessing their internal procedures and treat it as a necessity to mitigate criminal risks.

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