

THE EFFECTIVENESS OF EXECUTING TRIAL E-COURT DURING THE COVID-19 PANDEMIC IN MATTERS OF SHARIAH ECONOMIC LAW PERSPECTIVE MASLAHAH MURSALAH IMAM ASY SYATIBI (Case Study of the Medan Religious Court)

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Abstract:

E-Court is an application that is integrated with SIPP which is used to process lawsuits/applications, payment of court fees, summons, notifications and delivery of decisions electronically, as well as to process other administrative services. Imam Syatibi also said that sharia actually aims to realize the benefit of humans in this world and in the hereafter. In the e-court trial during the Covid-19 pandemic there were benefits that made it easier to conduct trials and there was no harm in the trial. This e-court trial is very effective which makes it easier for every plaintiff and defendant to conduct a trial. In e-court trials it is very often used in the Medan Religious Court itself, especially regarding sharia economic cases, the effectiveness of online case registration through the E-Court application that can be obtained from this application, namely, saving time and money in the case registration process, payment of down payment fees which can be done in multi-channel channels or from various payment methods and banks, Documents are properly archived and can be accessed from various locations and media, Faster Data Retrieval Process.

Keywords: *Imam Asy-Syatibi, sharia economic law, effectiveness, e-court trials.*

Introduction

Music is the sound or effect of something captured by the listener's senses. Based on the considerations in the Supreme Court Regulation of the Republic of Indonesia Number 1 of 2019 concerning Electronic Administration of Cases and Trials that in order to realize the principles of simple, fast and low cost in court, it is necessary to reform in overcoming obstacles to the process of administering justice, which is in accordance with the demands and developments of the times requires the existence of case administration services in court effectively and efficiently so that it is deemed necessary to implement administrative services in court electronically.

As explained above, this principle has the consequence that the course of proceedings in court is carried out effectively, efficiently, does not take a long time, and the costs of the case that must be paid by the parties can be borne by the litigants, the principle is simple, fast, and costs Mild justice is a principle that is

used as a reference in the implementation of both civil and criminal justice processes¹.

What is meant by electronic case administration is a series of processes for receiving lawsuits/applications, answers, replicas, duplications and conclusions, managing the submission and storage of civil, religious, military administrative, state administrative case documents using an electronic system that applies in each environment justice².

Based on the provisions of this Supreme Court Regulation, the E-court system was created, namely a court instrument as a form of service to the public in terms of online case registration, online payments, sending trial documents (replik, duplik, conclusions, answers), and summons online³. E-court implementation is based on the principle of simple, fast and low-cost justice because there is no longer a manual summons for the parties because summons can be made electronically starting with creating an account. The account creation is made at the local District Court, which is in the corner of the E-court or can be accessed directly at <https://ecourt.mahkamahagung.go.id>. For persons or legal entities, the account is only valid for one case, while for lawyers the account can be used for various cases⁴.

To register for an E-Court account, not just anyone can register, because there are several terms and conditions for using E-Court, namely⁵:

1. General requirements

- a. These provisions apply to all E-Court Application Registered Users.
- b. The E-Court application consists of an electronic case registration module (E-Filing), an electronic case payment module (E-Payment), an Electronic Notification module (E-Pbt), and an Electronic Calling module (E-Call) .
- c. Users of the E-Court application are only permitted to use the E-court application for the intended purpose, namely registration, payment and sending of documents related to cases in court.
- d. Registered users are fully responsible for all activities carried out under their respective usernames.
- e. Registered users are prohibited from carrying out any activities that could endanger the security and stability of the E-Court application, supporting technology or data stored in it.

¹ Sari, Ni Putu Riyani Kartika. "Eksistensi E-Court Untuk Mewujudkan Asas Sederhana, Cepat, Dan Biaya Ringan Dalam Sistem Peradilan Perdata Di Indonesia." *Jurnal Yustitia* 13.1 (2019): 80-100.

² Habibullah, Muhamad Amri. *Tinjauan Yuridis Implementasi Pendaftaran Perkara Perdata Secara Elektronik Berdasarkan Perma No. 3 Tahun 2018 Tentang Administrasi Perkara Di Pengadilan Secara Elektronik (Studi pada Pengadilan Negeri Pekalongan)*. Diss. Universitas Islam Sultan Agung, 2019.

³ Lorenza, Armenia, Artika Sophia Maharani, and Rizky Rioneldi. "Implementasi Dan Dampak Bagi Advokat Dalam Pelaksanaan Pendaftaran Perkara Secara Virtual." *DiH: Jurnal Ilmu Hukum Volume 17 Nomor 1 Februari 2021*: 105.

⁴ Burhanuddin, Hamnach, H. Ahmad Fathonih, and Aden Rosadi. "Layanan perkara secara elektronik (e-court) saat pandemi Covid-19 hubungannya dengan asas kepastian hukum." (2020).

⁵ Rosmana, Fitri, Ahmaturrahman Ahmaturrahman, and Abdullah Gofar. *Pelaksanaan Sistem E-court dalam Penyelesaian Perkara Perdata oleh Advokat di Kota Palembang*. Diss. Sriwijaya University, 2020.

- f. Registered users must ensure the use of polite and appropriate Indonesian in verbal and written communications for every transaction made through the ECourt application.
 - g. Registered users are prohibited from using the ECourt Application to carry out illegal actions such as uploading files that have nothing to do with court cases.
 - h. Registered users are advised not to share their username and password access to the E-Court application with other people.
Rosmana, Fitri, et al. Implementation of the E-Court System in Settlement of Civil Cases by Advocates in the City of Palembang. Diss. Sriwijaya University, 2020
 - i. All transactions on the E-Court Application and the modules below can only be made on official court days and working hours. Transactions carried out outside the court's official business days and hours will be counted effective on the next working day.
2. Use of E-Filing Applications
 - a. The E-Filing application can be used to electronically register cases in lawsuits and/or civil, religious, military administrative, or state administrative applications. This application can be used to register a lawsuit and/or application as well as to enter electronic documents which, when verified and procedurally accepted, will initiate a civil case or to enter electronic documents for an existing case.
 - b. The E-Filing application can also be used to upload or download documents in the context of replicating, duplicating and concluding, managing, submitting and storing civil/religious/military administrative/state administrative case documents.
 - c. Registered users must pay attention to technical standards which include document format, size, font, size and/or other restrictions that have been set in uploading documents through the E-Court application⁶.
 3. Terms of use of the E-Payment application
 - a. The E-Payment application can be used to make payments for down payment on court fees determined through the E-SKUM application as a follow-up to electronic registration.
 - b. Registered users must pay close attention, the amount of down payment for court fees to be paid, the payment account number (virtual account), the period for repayment of down payment for case fees determined by the system, and understand and agree that any errors, delays, and fees Additional fees arising from the difference between the bank used by the registered user and the official account of the court where the lawsuit was filed are the responsibility of the registered user.

⁶ Rudy, Dewa Gde, and I. Dewa Ayu Dwi Mayasari. "Keabsahan Alat Bukti Surat Dalam Hukum Acara Perdata Melalui Persidangan Secara Elektronik." *Jurnal Pendidikan Kewarganegaraan Undiksha* 9.1 (2021): 167-174.

- c. Failure to make payment to the Payment Number within the specified timeframe will result in the Payment Number being expired and the Registered User having to obtain a new Payment Number at the same Registration via E-Payment on ECourt.
 - d. Registered users are required to make payments in accordance with the invoice value on the Payment Number obtained at the time of case registration.
4. Terms of Use of the EPbt and E-Call applications
- a. Registered users are responsible for ensuring that all notifications sent via the E-Pbt and/or E-Call module can be properly received at the Electronic Domicile that has been registered with the Court.
 - b. All calls and notifications sent to a Registered User's Electronic Domicile are deemed to have been received if the EPbt and E-Call application logs have recorded that the call has been sent.
 - c. Registered users are advised to routinely check the log of sending E-Pbt and E-Calls which can be accessed on the Registered User's access dashboard to prevent failure to receive E-Pbt and/or E-Calls.
5. Closing
- a. Every action taken by a Registered User which is considered by the Supreme Court of the Republic of Indonesia as an action that is contrary to the Terms of Use of this Application will be subject to sanctions in the form of:
 - Minor sanctions in the form of a warning.
 - moderate sanction in the form of temporary revocation of access rights; and/or
 - Severe sanctions, in the form of permanent revocation of access rights in accordance with the weight and impact of the violations found on the integrity of the E-Court application.
 - b. The imposition of sanctions does not rule out the possibility of carrying out civil compensation lawsuits and/or criminal prosecution of Registered Users in the event that the Supreme Court is of the opinion that an unlawful act and/or criminal act has occurred⁷.

With the existence of E-Court, parties who cannot come to court can still carry out trials, for example in the replica stage, no need to come to court, just make a replica, then send it and finish it, then verify it by the assembly so that other parties can read and prepare rebuttals to what was said. has been submitted⁸.

This regulation aims to improve the case administration system in order to increase the acceleration of case settlement, accountability, effectiveness and transparency. The importance of the case administration service system through-

⁷ Ocarina, Majolica Fae, and Ronaldo Sanjaya. "Eksistensi E-Court Untuk Mewujudkan Efisiensi Dan Efektivitas Pada Sistem Peradilan Indonesia Di Tengah Covid-19." *Jurnal Syntax Transformation* 2.4 (2021): 496-507.

⁸ Shidiq, Achmad Zacfar. "Sistem e-court sebagai wujud implementasi asas peradilan sederhana cepat dan biaya ringan (studi di pengadilan negeri Mojokerto)." *Dinamika: Jurnal Ilmiah Ilmu Hukum* 27.3 (2021): 331-349.

court is to reduce the intensity of the parties meeting with the judiciary apparatus so as to reduce the occurrence of extortion and corruption. Thus, the integrity of the court and judicial apparatus will be maintained⁹.

During the e-court conference for the number of cases that came in regarding sharia economic law matters, a total of 30 more cases than during the pandemic in 2019-2022, for cases where the verdict has also been legally binding, there are 14 total cases from the past 2 years, for cases which has not been decided and the appeal is still ongoing, there are 10 appeal cases in total and the rest of the trial is still ongoing as well as proceeding with mediation.

According to language, the word *maslahah* comes from Arabic and has been standardized into Indonesian to become the word *maslahat*, which means bringing goodness or bringing benefit (*manfa'ah*) and rejecting damage (*mafsadah*). Because in essence the *shari'ah* was revealed in this world only for the benefit of humans (*innama unzilati shari'atu lithahqiqi mashalihil anam*). According to the original language, the word *maslahah* comes from the words *salaha*, *yasluhu*, *salahan* (صلح, يصلح, صلحا) meaning something good, proper and useful. While the word *mursalah* means free, not bound by religious arguments (*Qur'an* and *al-Hadith*) that allow or prohibit it.

In terms, ash-Syatibi explained *maqâshid al-syar'ah* (Ash-Syatibi, t.tn):

هذه الشريعة... وضعت لتحقيق مقاصد الشارع في قيام مصالحهم في الدين والدني مع

The Meaning:

"Indeed, sharia aims to realize the benefit of humans in this world and in the hereafter".

Based on that understanding, it can be said that the purpose of sharia according to Imam ash-Syatibi is the benefit of mankind. In relation to that, he stated that there is not a single law of Allah SWT that does not have a purpose because a law that does not have a purpose is the same as burdening something that cannot be implemented.

Research Method

In this study, researchers used qualitative research. Qualitative research is a research procedure that produces descriptive data in the form of written or spoken words from people and observable behavior. This research method used in the preparation of this thesis is as follows.

In this study, the authors apply qualitative research methods, field research, namely research that describes and classifies a legal phenomenon and the reality that occurs¹⁰.

The method used is descriptive qualitative with several approaches, namely statutory approach, conceptual approach, and case approach.

The legal basis used in this study:

⁹ RI, Ditjenmiltun Mahkamah Agung. "E-Court, Era Baru Beracara di Pengadilan." (2020).

¹⁰ Atikah, Ika. "Metode Penelitian Hukum." (2022).

1. RI Supreme Court Regulation (PERMA) Number 1 of 2019 concerning electronic case administration and trials in court which has been updated from Perma No. 3 of 2018.
2. Decision of the Supreme Court of the Republic of Indonesia Number 129/KMA/SK/VIII/2019 concerning technical guidelines for electronic case administration and trials in court.
3. Decision of the chairman of the Supreme Court of the Republic of Indonesia Number 122/KMA/SK/VII/2018 concerning guidelines for governance of registered users of court information systems.

In order for this research to be more directed, the researcher limits the scope of the research only to matters relating to the formulation of the problem as stated above, namely how effective is the e-court in case administration services for resolving cases at the Medan Religious Court and how are the efforts of the Medan Religious Court in increasing the use of case administration service applications through e-court in the pancari justice community.

At this stage, the researcher tries to create a good emotional relationship with the informant, the researcher makes observations first or conducts a preliminary study by conducting visits to research locations in stages, with primary data and secondary data (observations and interviews).

Results and Discussion

General Definition *E-court* in the Conference

E-court is a court instrument as a form of service to the community in terms of online case registration, electronic case fee down payment, online down payment, online summons and online trial sending trial documents (Replik, Duplik, Conclusion, Answer).

Following are the general terms and conditions for using the e-court Application:

1. This provision applies to all registered users of the e-court application
2. The e-court application consists of an electronic case registration module (e-filing), an electronic case payment module (e-payment), an electronic notification module (e-pbt), and an electronic calling module (e-call).
3. E-court application users are only permitted to use the e-court application for the intended purpose, namely registration, payment, and sending of documents related to court cases.
4. Registered users are fully responsible for all activities carried out under their respective usernames.
5. Registered users are prohibited from carrying out any activities that could endanger the security and stability of the e-court application, supporting technology or data stored in it.
6. Registered users must ensure the use of polite and appropriate Indonesian in oral and written communications for every transaction made through the e-court application.
7. Registered users are prohibited from using the e-court application to carry out illegal actions.
8. Registered users are advised not to share their username and password for access to the e-court application with other people.

9. All transactions in the e-court application and the modules below can only be made on official court days and working hours. Transactions carried out outside the court's official working days and hours will be counted effective on the next business day.

System *E-court* This is a court instrument as a form of service to the community for online case registration (*e-filling*). Estimated down-payment of electronic case fees (*e-Skum*), online payment of down payment (*e-Payment*) online party summons (*e-Summons*) and trials conducted online (*e-Litigation*)¹¹.

The urgency of having an e-Court is actually to have a positive impact on judicial institutions, namely justice based on the principles of fast, simple and low cost. Simple means that the examination and settlement of cases is carried out in an efficient and effective manner, this can be seen from the application of e-Court services in the case settlement process, some of which have been replaced in online forms such as replicas, duplicate answers and conclusions so that settlement of cases becomes simple and fast¹².

Effectiveness comes from the word effective which contains the definition of achieving success when achieving predetermined results. Effectiveness continues to relate the desired results to the actual results achieved. As mentioned by Arthur G. Gedeian et al in Nasution, gives the meaning of effectiveness namely: "That is, the greater the extent to which an organization's goals are met or surpassed, the greater its effectiveness" (The greater the achievement of the goals of the institution, the greater the effectiveness)¹³.

In accordance with what was stated above, that when the achievement of the aims of the institution is greater, the greater its effectiveness. Based on this definition, it can be concluded that there is an achievement of the big goals of the institution so that the greater the findings that will be achieved from those intentions. In accordance with Serlika Aprita, effectiveness means that "Effectiveness is the ability to carry out tasks, functions (operations, program activities or missions) rather than an organization or the like in which there is no pressure or tension between its implementation"¹⁴.

So effectiveness is the competence to carry out obligations, the role of an institution/company and there is no pressure on its operation. When the greater the achievement of the purposes of the institution, the greater its effectiveness.

Al-Maslahah Al-Mursalah Theory of Imam Ash Syatibi

In Islamic studies on the conference *E-court* basically no one has regulated this electronic conference yet, so the author associates it with *maslahah mursalah* imam Syatibi, which this imam approves of *maslahah mursalah*, the meaning of *maslahah mursalah* itself is the principle of benefit that is used to establish an

¹¹ Mari'a, Haniam. *Pendaftaran Perkara secara E-Court bagi Advokat Ditinjau dari Asas Sederhana Cepat dan Biaya Ringan (Studi pada Kantor Advokat di Ponorogo)*. Diss. IAIN Ponorogo, 2022.

¹² Wahyu, Aida Nahar. *Efektivitas E-Court Dalam Penyelesaian Perkara Perdata Untuk Mewujudkan Asas Peradilan Sederhana, Cepat Dan Biaya Ringan Di Pengadilan Negeri Purwokerto*. Diss. UIN Prof. KH. Saifuddin Zuhri Purwokerto, 2021.

¹³ Suci, I. Gede Sedana, et al. "Pengantar Sosiologi Pendidikan." *Pasuruan: Qiara Media* (2020).

¹⁴ Serlika Aprita, S. H. *Sosiologi Hukum*. Prenada Media, 2021.

Islamic law, it can also mean, an act that hedges the value of maslahat or is beneficial and rejects or prevents mafsadat.

The concept of maslahah within the scope of this main objective has levels, Usul scholars divide these levels into three classifications, namely¹⁵:

1. First, the level of Al-Dharuriyyah (primary) is benefit related to the basic needs of mankind in this world and the hereafter. In the sense that without its presence (the existence of this Maslahah) will cause damage in the world and the hereafter. The Daruriyyah category includes five things, namely; Din (maintaining Religion); Nafs (maintaining the soul), 'Aql (maintaining the mind), Nasl (maintaining the offspring); Mal (maintaining property). These five Maslahahs are called Maslahah Al-Khamsah which have been universally accepted by scholars. Muhammad Khalid Mas'ud stated also, that from an analysis of syar'I objectives it was found that Shari'ah also considers these objectives important. Shari'a obligations can be divided from a positive point of view and ways of preventive protection into two groups. Included in the positive way are worship, custom and mu'amalat, while those included in the preventive group are jinayat.
2. The second level is Maslahah Al - Hajjiyah (secondary interest), namely the benefit needed in perfecting the previous basic (primary) benefit in the form of relief to maintain and maintain basic human needs, as well as giving him the flexibility to expand (tawassu') goals (maqasid). So if hajjiyat is not considered along with daruriyat then humanity as a whole will face difficulties. But the destruction of the hajjiyat does not mean the destruction of the whole masalih. As an example of summarizing (qashr) in terms of worship, it is permissible to buy and sell orders (bay al salam), cooperation in agriculture (muzara'ah) and plantations (musaqqah), which are supporters of the basic needs of Al - Mashali h Al - Khamsah or Maslahah Al-Mu'tabarah .
3. The third level is Tahsiniyyah (complementary interests), namely benefits that are complementary in the form of freedom that can complement the previous benefits. For example, it is recommended to eat nutritious food, dress nicely, do sunnah practices as additional practices. The three benefits above are linked in the form of a priority scale. That is, that the primary interest (dharuri) is the basis and foundation for other (malih) interests. While the secondary interest (hajjiyah) becomes a buffer and complements the primary interest (masalih dharuri), just as the complementary interest (tahsiny) is a supporting element for the secondary interest (maalih hajjiyah).

According to Al-Syatibi, human welfare can be realized when the five basic elements of human life can be realized and can be maintained, namely religion, soul, intellect, lineage, and wealth. In this framework, he divided maqhasid into three levels, namely dharuriyat, hajjiyat, and tahsiniyat. From the results of his more in-depth analysis, Al-Syatibi concluded the correlation between dharuriyat, hajjiyat and tahsiniyat as follows.

¹⁵ Bedong, Muhammad Ali Rusdi. *Maslahat dan Kaidahnya*. IAIN Parepare Nusantara Press, 2020

Maqhasid dharuriyat is the foundation of maqhasid hajiyyat and maqhasid tahsiniyyat. Damage to maqhasid hajiyyat and maqhasid tahsiniyyat cannot damage maqhasid dharuriyat. Damage to maqhasid dharuriyat cannot damage maqhasid hajiyyat and maqhasid tahsiniyyat. Damage to maqhasid hajiyyat and maqhasid tahsiniyyat cannot damage maqhasid dharuriyat. Damage to maqhasid dharuriyat, maqhasid hajiyyat and maqhasid tahsiniyyat absolute can sometimes damage maqhasid dharuriyat. Maintenance of maqhasid hajiyyat and maqhasid tahsiniyyat is treated for the proper maintenance of maqhasid dharuriyat.

Thus, when analyzed further, in an effort to achieve the preservation of the five basic elements perfectly, the three levels of maqhasid cannot be separated. It seems that for Al-Syatibi, the level of hajiyyat is the completion of the level of dharuriyat, the level of tahsiniyyat is the completion of the level of hajiyyat, while dharuriyat is the basis of hajiyyat and tahsiniyyat. The classification done by Al-Syatibi shows how important the preservation of the five basic elements is in human life. Besides that, the classification also refers to the development and dynamics of the understanding of law created by Allah swt. In order to create human welfare.

In this regard, Mustafa Anas Zarqa explained that the intangible aspect of dharuriyat can damage human life in the world and the hereafter as a whole. Ignoring the hajiyyat aspect does not damage the existence of the five basic elements, but only brings difficulties for humans as mukhallaf in realizing them. As for ignoring the tahsiniyyat aspect, efforts to maintain the five basic elements are not perfect. Furthermore, he stated that all activities or things that are tahsiniyyat must be set aside if they conflict with higher maqhasid (dharuriyat and hajiyyat).

According to Asy-Syatibi Maslahah mursalah can be used as a legal basis when:

1. Benefit is in accordance with what principles are contained in the provisions of the Shari'a which according to the ushul and furu' do not conflict with the texts.
2. Maslahah can only be specialized and applied in the social fields (mu'amalah) where this field accepts rationality compared to the field of worship. Because in mu'amalah it is not regulated in detail in the text.
3. The result of maslahah is the maintenance of Daruriyyah, Hajjiyyah, and Tahsiniyyah aspects. Maslahah method is a step to eliminate difficulties in various aspects of life, especially in social problems.

As Allah swt has said:

هو اجتياكم وما جعل عليكم في الدين من حرج

The Meaning:

"And he never made for you in religion a limitation"

Research Results

Registration stage *E-court* in the Medan religious court using a simple, fast and low-cost system.

Here are some levels in the use of E-Court¹⁶ :

1. Case Registration (E-Filing) Online case registration is carried out after being registered as a registered user by selecting a Religious Court that is already actively conducting E-Court services. All registration files are sent electronically via the Supreme Court of the Republic of Indonesia's E-Court application.
2. Estimated Down Payment (E-Skum) By registering cases online via E-court, Applicants will automatically receive an Estimated Down Payment (E-SKUM) and Payment Number (Virtual Account) which can be paid via electronic channels (Multi Channel). which is available.
3. Obtain Case Number After the Applicant has made a payment according to the Estimated Down Payment (E-Skum), the Court will issue the Case Number on business days and hours, then the E-Court application will provide a notification/notification that the case has been registered with the Court.
4. Invitation of Parties online (E-Summon) Subpoenas and Notifications of Decision are delivered to the parties via electronic channels to the e-mail addresses of the parties and information on the summons can be viewed on the E-Court application.
5. Electronic Trials (ELitigation) The application supports electronic (online) trials so that trial documents such as Replik, Duplicates, Answers and Conclusions can be sent electronically.
6. Electronic Copy of Decision (E-Copy) The application contains information on the decision, namely the date of decision, order of judgment, date of withdrawal and a copy of the electronic decision can be downloaded through this application.
7. Electronic Signature (E-Sign) Signing of the Electronic Decision Copy file.

Conclusion

There are three principles of the Medan Religious Court which conduct trials in an e-court manner, namely, the principles of simplicity, speed, and low cost are the principles that serve as a reference in the implementation of the judicial process.

The E-court system is a court instrument as a form of service to the community online which aims to make it easier for the community to carry out the judicial process.

Strategy to create a simple, fast and low-cost trial:

1. Simplification of Matter Process,
2. Improvement of Matter Management,
3. Completion of Case Register Recording,
4. Control Mechanisms Against Problem Resolution

¹⁶ Susanto, Susanto, Muhamad Iqbal, and Wawan Supriyatna. "Implementasi E-Court Pada Pendaftaran Gugatan Dan Permohonan Di Pengadilan Agama Tigaraksa Dalam Rangka Mewujudkan Peradilan Cepat, Sederhana Dan Biaya Ringan Dengan Didukung Teknologi." *Proceedings Universitas Pamulang* 1.1 (2021).

In the case of mursalah, an e-court hearing is allowed because it does not contain any harm in it, but there are benefits that can make people not gather in one place during the covid pandemic and benefits that help the plaintiff and the defendant to reduce the administration of each registration fee. And it is very effective for field religious courts in dealing with sharia economic matters through this electronic system.

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