



Reassessing Judicial Considerations in Cases of Collection and Refining of Illegal Gold: An Ecological Justice-Based Analysis of Palangka Raya District Court Decision Number 366/Pid.Sus-LH/2024/PN Plk

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ABSTRACT

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This study aims to analyse the judicial considerations in Decision of the Palangka Raya District Court Number 366/Pid.Sus-LH/2024/PN Plk concerning the criminal offense of collecting and refining gold derived from illegal mining activities (unlicensed mining/PETI). The research employs a normative juridical method, utilizing both statutory and case approaches. The analysis focuses on the construction of the perpetrator's criminal liability and the conformity of the court's reasoning with the principles of ecological justice. The findings indicate that the panel of judges formally applied the provisions stipulated in Law on Mineral and Coal Mining (Minerba Law) and the Law on Environmental Protection and Management by establishing the elements of the actus reus and mens rea. However, the judicial reasoning remains oriented toward the normative fulfilment of the elements of the offense and has not explicitly integrated an ecological justice approach as a foundational basis for sentencing. Although the decision reflects legal certainty, it does not fully strengthen the function of criminal law as an instrument for environmental protection. Therefore, it is necessary to reinforce the paradigm of ecological justice within judicial reasoning to ensure the effectiveness of law enforcement against the chain of illegal mining crimes.

1. INTRODUCTION

Mining is a strategic sector in national economic development, yet its exploitation frequently fails to keep pace with the principle of environmental sustainability. The phenomenon of illegal mining, including unlicensed gold mining (Gold Mining Without Perm, PETI), is not merely a domestic Indonesian problem but a global issue. International organizations such as the OECD have noted that mineral supply chains particularly gold sourced from high-risk areas are vulnerable to links with legal violations, environmental damage, and financial crime throughout the distribution chain, from the mining site to the smelting and refining stage, which functions as the control point for the flow of illegal minerals into the global market (OECD, 2016). This fact confirms that the problem of PETI cannot be understood partially as a mining crime alone, but rather as a chain of criminal conduct involving collectors and refiners of mined output

who provide market guarantees for the continuity of such illegal activities (Gustiyan, 2026; Rafikah, 2026).

In Indonesia, a similar phenomenon occurs almost uniformly across various gold-producing regions. Muryani's (2019) study of PETI practices in Banyumas Regency shows that unlicensed gold mining is commonly accompanied by the use of mercury in the processing stage, which causes environmental pollution while also giving rise to legal problems for the perpetrators. Repressive law enforcement against PETI continues to face obstacles in the scientific proof of environmental damage, overlapping regulations, and equally important weak enforcement against the intellectual actors and financiers behind the illegal mining distribution chain (Sekhroni, 2025). These findings reveal a consistent pattern: law enforcement to date has tended to stop at direct miners, while the parties who collect, process, and refine illegally mined output who in fact sustain the economic continuity of PETI often escape an equivalent scope of criminal liability.

Normatively, the state has provided legal instruments to prosecute the entire chain of such illegal mining crimes. Law Number 3 of 2020 on the Amendment to Law Number 4 of 2009 on Mineral and Coal Mining (Minerba Law) not only prohibits mining without a Mining Business License (IUP), but also explicitly criminalizes the collection, processing, and refining of minerals not originating from official license holders. This provision shows that national mining legal policy has shifted from an approach that only targets field-level operators toward a supply chain approach that ensnares every party within the PETI ecosystem (Ananda, Haerani, & Mapareppa, 2026; Fasya, 2025; Haris, 2026; Runtunuwu, 2026). On the other hand, where such activities cause pollution or are conducted without environmental approval, the criminal provisions of Law Number 32 of 2009 on Environmental Protection and Management (PPLH Law) may also apply, meaning that perpetrators of PETI may potentially be subject to two legal regimes cumulatively.

The problem is that the availability of progressive norms does not automatically guarantee that their application in the judicial sphere reflects full justice whether justice for the victims of environmental damage, procedural justice for the defendant, or justice toward nature itself (Aslan, 2026; Haryadi et al., 2025). In contemporary environmental legal theory, the concept of ecological justice has been developed as an extension of environmental justice, namely the idea that justice does not only concern the distribution of environmental risk among human beings, but also encompasses the justice relationship between human communities and non-human nature, which must be realized through recognition, participation, and capability, rather than merely a distributive aspect (Schlosberg, 2007; Barus, 2026; Low & Gleeson, 2019). This framework is relevant for assessing whether court decisions in environmental cases including PETI cases have

moved beyond an administrative-retributive approach to punishment and genuinely take into account ecological recovery and the interests of nature as an injured subject.

The Palangka Raya District Court Decision Number 366/Pid.Sus-LH/2024/PN Plk is interesting to examine in this context because the case targets not only the miners but also extends to the parties who collected and refined gold derived from PETI in an enforcement pattern consistent with the supply chain approach mandated by the Minerba Law, while also reflecting an expansion of criminal liability across the chain of illegal mining crime that has often remained beyond the law's reach. An examination of the judge's legal reasoning in this decision is important for assessing the extent to which judicial argumentation expands the scope of such criminal liability, and for testing whether the decision handed down reflects the principle of ecological justice or, conversely, remains confined to procedural-administrative law enforcement without adequately accommodating environmental recovery and long-term ecological interests. The selection of this decision as the object of study is based on three main considerations. First, this decision is one that explicitly reaches downstream actors (collectors and refiners) as mandated by the supply chain approach in the 2020-amended Minerba Law, making it representative for testing the extent to which that norm has been applied consistently by first-instance judges. Second, this decision was handed down in 2024 in Central Kalimantan, one of the regions with high intensity of PETI and mercury use, making it relevant for testing the extent to which ecological dimensions have been integrated into judicial reasoning in areas of significant environmental risk. Third, this decision is publicly available through the Supreme Court Decision Directory and contains sufficiently complete legal reasoning for analysis, allowing for a measured comparison with similar decisions in other jurisdictions.

Based on the foregoing discussion, the main problem examined in this study is how the judge's legal reasoning, in handing down the decision against the perpetrators of collecting and refining gold derived from PETI in the Palangka Raya District Court Decision Number 366/Pid.Sus-LH/2024/PN Plk, addressed criminal liability, and whether that decision reflects the principle of ecological justice.

2. RESEARCH METHOD

Legal research, often referred to as legal research, is a scientific process for consistently discovering legal truth by examining legal norms in the form of commands

and prohibitions, as well as human conduct that follows legal principles. Legal research must be supported by methods and techniques to systematically analyze legal phenomena (Disemadi, 2021; Setia Negara, 2023). The research method serves as a systematic framework that supports the research findings, and therefore must be elaborated comprehensively, ranging from the type of research and the approaches used to the sources of legal materials and the techniques of collection and analysis.

This study employs normative legal research, namely research that examines the system of applicable legal norms and regulations relevant to the legal problem under study through library research. Normative legal research is descriptive-analytical in nature, focusing on the study of regulatory texts, doctrine, and legal literature without involving the collection of primary data through surveys or interviews, with the aim of constructing juridical argumentation on a particular legal issue (Setia Negara, 2023). To achieve this aim, the study employs three approaches commonly used in normative legal research, namely the statute approach, the case approach, and the conceptual approach (Disemadi, 2021; Rosidi et al., 2024). The statute approach is used to examine legislation relevant to the legal problem under study in order to systematically explore the applicable legal provisions, in this case the provisions of the Minerba Law, the PPLH Law, and the Criminal Code (KUHP) relating to mining. The case approach is used to examine the application of legal rules in actual decisions in order to build argumentation based on legal practice in the field, which in this study is realized through an analysis of the Palangka Raya District Court Decision Number 366/Pid.Sus-LH/2024/PN Plk. In its position, that decision is treated in a dual capacity: as primary legal material because it is juridically binding, and at the same time as the main object of study (unit of analysis) compared against similar decisions. The comparative decisions used (Martapura District Court Decision Number 57/Pid.Sus-LH/2023/PN Mtp, Balikpapan District Court Decision Number 98/Pid.Sus-LH/2022/PN Bpn, and Palembang District Court Decision Number 66/Pid.Sus-LH/2023/PN Plg) were selected based on four criteria: (1) all adjudicate the criminal offense of unlicensed mining/PETI under the special environmental case register (LH) pursuant to the Minerba Law in conjunction with the PPLH Law; (2) all were decided within the 2022–2024 period so as to be temporally comparable within the regulatory context following the 2020 amendment of the Minerba Law; (3) all are publicly available and officially accessible through the Supreme Court

Decision Directory, so that their legal reasoning can be traced in full; and (4) all contain judicial reasoning that explicitly touches on at least one of the two dimensions examined, namely the construction of fault (*mens rea*) or consideration of ecological impact, making them relevant for thematic comparison with the decision at hand (*a quo*). The conceptual approach, meanwhile, is used to examine the basic concepts and legal principles relevant to strengthening the study's theoretical argumentation (Rosidi et al., 2024), namely through the theory of criminal liability and the theory of ecological justice. The operationalization of the theory of criminal liability is carried out through two indicators: proof of the element of conduct (*actus reus*) in the form of unlicensed collection/refining activity, and proof of the element of fault (*mens rea*) as measured by the scope of the defendant's awareness whether limited to the illegal status of the source of the mined material or extending to awareness of the ecological risk generated. Meanwhile, the operationalization of the theory of ecological justice refers to the three indicators developed by Schlosberg (2007): recognition (explicit acknowledgment of ecological interests as an injured party), participation (the involvement of scientific evidence or environmental expert testimony in the proof process), and capability (accommodation of the restoration of ecological capacity and the rights of future generations in the verdict or judicial reasoning). These three indicators are used as parameters to assess the extent to which the judge's reasoning in the decision at hand (*a quo*) reflects the principle of ecological justice.

In normative legal research, the data sources used are secondary data comprising primary, secondary, and tertiary legal materials. Primary legal materials are juridically binding sources, such as statutes, international agreements, and relevant court decisions. Secondary legal materials are literature that assists in understanding and interpreting the primary legal materials, including scholarly books, journal articles, and recent academic publications. Tertiary legal materials, meanwhile, consist of supporting sources such as legal dictionaries, encyclopedias, and other referential publications that explain the legal terms or concepts used. All three types of legal material were collected through library research techniques, namely by examining legislation, doctrine, scholarly literature, and other relevant legal documents to answer the study's research questions (Setia Negara, 2023). The collected legal materials were then analyzed using a descriptive-prescriptive-evaluative analytical technique. The descriptive stage is used to systematically outline the

construction of the judge's legal reasoning in the decision at hand based on the previously established operational indicators; the evaluative stage is used to assess the conformity and gaps of that reasoning against the principles of criminal liability and ecological justice, including through comparison with similar decisions; and the prescriptive stage is used to formulate concrete recommendations, including proposed indicators for assessing ecological impact and a framework for weighting criminal sanctions, in order to foster a more applicable policy contribution to judicial practice (Disemadi, 2021; Setia Negara, 2023).

3. RESULTS AND DISCUSSION

3.1 Construction of Criminal Liability in the Decision and Comparison with Other Decisions

The panel of judges in the decision at hand constructed criminal liability by examining the fulfillment of the elements of the criminal offense under the Minerba Law and the Law on Environmental Protection and Management (PPLH). The element of conduct (*actus reus*) was proven through the activity of collecting and refining gold without valid authorization, while the element of fault (*mens rea*) was determined from the defendant's awareness of the origin of the gold as derived from unlicensed mining (Munthe, Syahrannuddin, & Ramadani, 2025).

This approach is consistent with Maduwu's (2023) argument that, in cases of unlicensed mining, proof of the elements of conduct and *mens rea* constitutes the primary foundation of criminal liability. In a study analyzing the Martapura District Court Decision Number 57/Pid.Sus-LH/2023/PN Mtp, the judge likewise held that the process of collecting illegally mined material without regard to the legal status of its source represents an unlawful act (Lestari et al., 2023). This comparison demonstrates juridical consistency in proving the elements of the offense based on objective and subjective elements, irrespective of whether the perpetrator engaged in exploration or merely in downstream processing. However, an important difference exists in the construction of fault. In the Martapura decision, the judge gave clearer weight to “disregard for ecological consequences” as an aggravating factor, whereas the decision at hand focused on knowledge of the illegal source. This shows that *dolus eventualis* can be understood more broadly in the context of environmental impact not merely awareness of the illegal status

of the raw material, but also awareness of the ecological impact produced (Lestari et al., 2023; Disemadi, 2021).

In doctrinal terms, Disemadi (2021) explains that the principle of *geen straf zonder schuld* (no punishment without fault) demands an analysis not only of criminal intent alone, but also of the understanding that the perpetrator comprehends the legal and social consequences of the act. This is further reinforced by White (2020) through the perspective of green criminology, which extends the object of criminal liability to ecological damage as an aspect that must also be accommodated within the theory of *mens rea*.

Ultimately, although the juridical construction of the decision at hand satisfies the formal elements, an expanded interpretation of fault must include the perpetrator's awareness of the ecological consequences produced, to provide a stronger and more progressive juridical justification in the context of environmental protection. Expanding the scope of *mens rea* is essential, particularly in emphasizing that environmental loss and damage are not always actual harm but also encompass potential threats of damage to ecosystems and public health (Ely & Widjajanti, 2025; Putra et al., 2026), given that such impacts often do not arise immediately and are difficult to quantify directly. Within the framework of the mental element, the spectrum of fault does not stop at intent (*dolus*), but also includes recklessness in the form of *dolus eventualis* or *culpa gravis*, through negligence (Irawati, 2024; Nano, Sahay, & Pramita, 2026). The application of this spectrum is relevant to the decision at hand, since the defendant, as a collector and refiner of gold, should reasonably have been aware of the risk of ecological damage inherent in unlicensed mining activity, not merely aware of the illegal status of the gold's source. Thus, a construction of fault that stops only at knowledge of the legality of the source risks reducing the seriousness of environmental risk that could in fact have been anticipated by the perpetrator. To advance this expanded interpretation beyond the merely conceptual level, this study proposes a set of operational indicators that judges may use to assess whether a collector/refiner should have known of the ecological risk of the mined material received, namely: (1) the scale and frequency of collection transactions that are unusual for legitimate refining businesses; (2) the absence of documentation of the origin of the mined material (chain of custody) as required by the OECD's supply chain due diligence principles (2016); (3) the use of processing methods identical to PETI

practices, such as mercury amalgamation without hazardous waste management; and (4) the duration of continued trading relationships with unlicensed suppliers. These four indicators can serve as a more measurable guide for proving *dolus eventualis*, so that the construction of fault rests not only on the defendant's subjective admission, but also on objective facts that would reasonably have given rise to an awareness of ecological risk.

3.2 Judicial Considerations from the Perspective of Ecological Justice and Comparison of Decisions

The judge's reasoning in the decision at hand remains oriented toward proving the administrative elements of the offense and the legality of licensing, while ecological dimensions such as mercury use, the potential for water and soil pollution, and long-term impacts on society have not been substantively analyzed.

Criticism of this kind of approach has been voiced by Andri & Akbar (2023), who show that in many decisions on illegal mining offenses, administrative aspects are often more dominant than ecological considerations. In the Balikpapan District Court Decision Number 98/Pid.Sus-LH/2022/PN Bpn, the judge included an analysis of environmental impact as one of the aggravating factors, which subsequently influenced the severity of the sentence. This approach appears more “pro-environment” than the decision at hand, which focuses more solely on evidence of licensing violations.

In international literature, ecological justice is understood as a legal principle that demands the protection of ecological systems as well as the community's right to a healthy environment (Rohman, Hartiwiningsih, & Rustamaji, 2023; Saputra et al., 2024). This approach is expanded upon by Washington et al. (2024), who assert that ecological justice concerns not only the physical impact on the environment but also the rights of future generations to ecological resources.

In the comparative analysis, the Balikpapan District Court decision provides a concrete example of the integration of this principle, in which the judge's reasoning included scientific evidence of ecological impact and assessed the degree of damage as an aggravating factor. The decision at hand, by contrast, tends to place normative emphasis on the elements of the offense without probing deeply into the actual ecological impact (Lestari et al., 2023; Andri & Akbar, 2023).

Saputra et al. (2024) affirm that effective sentencing in environmental crimes must take into account not only the elements of the offense and intent, but also ecological

impact particularly where the perpetrator's actions have the potential to cause long-term and irreversible damage. This is relevant to ecological justice, which demands criminal law reasoning that integrates distributive, retributive, and restorative values of justice.

The significance of the ecological dimension that is absent from the judge's reasoning in the decision at hand can be seen in empirical findings concerning the health risks caused by mercury in unlicensed gold mining activities. Indah et al.'s (2020) study of unlicensed gold miners shows that mercury exposure correlates with various health risk factors, including impaired function of vital organs, owing to mercury's bioaccumulative nature and its resistance to environmental degradation. Such findings show that the ecological impact of the illegal mining chain from mining through collection and refining is not merely an abstract potential, but a concrete risk that can be scientifically proven and should be taken into account by judges, as was done in the Balikpapan District Court decision. The absence of elaboration on this aspect in the decision at hand confirms a gap between a legalistic-administrative judicial approach and the demands of ecological justice, which requires proof of actual impact on ecosystems and public health as an integral part of sentencing considerations. Accordingly, the decision at hand needs to broaden the scope of its reasoning to include ecological impact as a weighting factor in sentencing, in line with developments in environmental sentencing theory and practice both in Indonesia and internationally. To prevent ecological justice argumentation from remaining merely descriptive, this expanded reasoning needs to be operationalized through concrete measurement indicators. Referring to the three pillars of ecological justice developed by Schlosberg (2007) recognition, participation, and capability this study proposes the following criteria as parameters for integrating ecological justice into judicial reasoning: first, the recognition aspect is measured by whether the judge explicitly acknowledges the affected ecosystem and community as an injured party, rather than merely the state as license holder; second, the participation aspect is measured by whether environmental expert testimony or laboratory test results on pollution levels (mercury, heavy metals) are incorporated into the proof process; and third, the capability aspect is measured by whether there is an order for environmental restoration or consideration of long-term impacts on future generations in the verdict or reasoning. These three indicators can serve as an evaluative checklist for judges and future researchers to more sharply and practically assess the extent to which an environmental

decision reflects ecological justice, rather than merely assessing it in normative-descriptive terms.

3.3 Critical Evaluation of the Decision from the Perspective of Criminal Law Policy

In formal juridical terms, the decision satisfies the principle of legality, the proof of the elements of the offense, and the construction of criminal liability. From the standpoint of criminal policy, however, the effectiveness of the criminal sanction needs to be assessed further.

Fernando et al. (2025) state that environmental criminal law reform must be directed toward enhancing deterrent effect and systemic protection of ecosystems. This is reinforced by Sarmilah et al. (2024), who show that low criminal sanctions in environmental cases can diminish the deterrent capacity of criminal law.

From the perspective of green criminology, White (2020) explains that environmental crime must be viewed as structural crime requiring a progressive penal approach, particularly toward perpetrators who play a role in commercially distributing the proceeds of environmental crime. This view is supported by Goyes & South (2022), who consider that illegal mining crime is often systemic and network-based, thus requiring the imposition of sanctions capable of producing a deterrent effect.

At the national level, Budiman et al. (2025) state that sentencing downstream actors (such as collectors/refiners) is an important strategy for severing the illegal economic chain. The use of a sustained deterrence approach is a necessity for enhancing the effectiveness of law enforcement in a sector with significant ecological impact.

The tendency of judges to impose sentences below the maximum threat in illegal mining cases has also been identified in a case study in Bangka Belitung, where the defendant's disadvantaged economic background is often used as a ground for mitigating the sentence (Cahyono, 2024). Although this approach may appear humanitarian in perspective, it in fact risks creating a counterproductive precedent, as it fails to produce a deterrent effect and may encourage the continuation of illegal mining activity rather than suppressing it. This issue becomes even more relevant when linked to downstream actors such as gold collectors and refiners, who notably act on economic-commercial motives rather than merely to meet basic subsistence needs, as is often the case with miners in the field. Accordingly, the application of the principle of sentence mitigation based on the perpetrator's economic condition ought to be carefully differentiated between upstream

actors (miners) and downstream actors (collectors/refiners), so that criminal sanctions remain proportionate and do not obscure the deterrence objective sought by environmental criminal law policy.

It should also be noted that in similar cases, such as the Palembang District Court Decision Number 66/Pid.Sus-LH/2023/PN Plg, the judge imposed a heavier criminal sanction after considering scientific evidence of the risk of water and soil pollution, which was then used as the basis for the aggravated sentence. This comparison shows that a judicial approach incorporating ecological impact considerations can produce more comprehensive sentencing (Lestari et al., 2023; Andri & Akbar, 2023). To translate this progressive recommendation into judicial practice, this study proposes a sentencing guideline framework based on the weighting of ecological impact that judges could adopt, comprising four assessment components: (1) the degree of the perpetrator's involvement in the supply chain (upstream/mining or downstream/collecting-refining), with greater weight given to downstream actors driven by commercial motives; (2) the type and hazard level of the substances used in the processing, such as the use of mercury without waste management; (3) the availability of scientific evidence regarding the extent and severity of pollution; and (4) whether the defendant has undertaken or will undertake environmental remediation efforts. These four components can be arranged into a simple weighting matrix that produces a recommended sentencing range, as has informally been reflected in the practice of the Balikpapan and Palembang District Courts when they incorporated scientific evidence of ecological impact as an aggravating factor. Such a formulation is expected to bridge the gap between the progressive norms of the Minerba Law and the PPLH Law and the practice of sentencing, which to date has remained variable and dependent on individual judicial interpretation.

Based on these various considerations, it can be concluded that although the decision at hand is formally valid in juridical terms, there is a need to strengthen the dimension of criminal law policy and to integrate the principle of ecological justice into judicial reasoning, in order to reinforce the objective of sentencing—namely, ecological protection alongside more effective prevention of environmental crime.

4. CONCLUSION

Based on the discussion presented, it can be concluded that the construction of criminal liability in the decision at hand formally satisfies, in juridical terms, the principle

of legality and the elements of the criminal offense as set out in the Minerba Law and the Law on Environmental Protection and Management (PPLH). The panel of judges examined and proved the fulfillment of the element of conduct (*actus reus*) as well as the element of fault (*mens rea*), particularly regarding the defendant's knowledge of the origin of the mined material obtained from unlicensed mining activity. This approach demonstrates consistency with other decisions in similar cases that emphasize the fulfillment of objective and subjective elements as the basis for criminal liability. Nevertheless, in terms of the construction of fault, the decision at hand remains relatively limited to the defendant's awareness of the illegal status of the raw material, without extending the analysis to awareness of the resulting ecological impact. Yet, in the development of doctrine and judicial practice, the concept of *dolus eventualis* in environmental crime can be interpreted more broadly to encompass the perpetrator's awareness of the potential ecological damage and accompanying social consequences. Accordingly, expanding the interpretation of the element of fault is important in order to strengthen both the juridical legitimacy and the progressiveness of the decision in the context of environmental protection.

From the perspective of ecological justice, the judge's reasoning in the decision at hand remains predominantly focused on administrative aspects and the legality of licensing, while a substantive analysis of environmental impact such as the potential for pollution, the use of hazardous substances, and long-term implications for the community and future generations has not been elaborated comprehensively. Compared with several other decisions that have integrated scientific evidence of ecological impact as an aggravating factor, the decision at hand reflects a more normative-formal approach. Yet the principle of ecological justice demands the integration of ecosystem protection, the community's right to a healthy environment, and intergenerational responsibility. From the perspective of criminal law policy, although the decision is juridically valid, the effectiveness of the sanction imposed needs to be evaluated within the framework of deterrence and systemic protection of ecosystems. Illegal mining crime, including at the downstream level of collectors and refiners, has a structural character and an extensive economic network, such that sentencing should be directed not only toward retribution but also toward prevention and the severing of the illegal economic chain. Integrating the ecological dimension as a sentencing weighting factor will strengthen the preventive

function while also affirming the environmental protection orientation of national criminal law policy.

It can therefore be affirmed that the decision at hand satisfies formal juridical standards, but still requires strengthening in its substantive dimension, particularly through the integration of the principle of ecological justice and a more progressive criminal law policy approach. Such strengthening is important to ensure that sentencing in environmental crime cases is not merely normative-administrative in nature, but genuinely oriented toward ecological protection, the interests of the community, and environmental sustainability for present and future generations. As an applied contribution, this study also proposes a set of operational indicators, namely: parameters for proving *dolus eventualis* based on objective facts, recognition-participation-capability measurement criteria for assessing the integration of ecological justice, and a sentencing guideline framework based on the weighting of ecological impact, which are expected to serve as a practical reference for judges in handling similar illegal mining cases in the future.

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