

Criminalization Policy in Realizing of Rupiah Sovereignty

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Abstract

Sovereignty of the Rupiah is mandatory or grand design in Law Number 7 Year 2011 on The Currency, sovereignty of the Rupiah has resulted in the obligation to use Rupiah within the territory of the Republic of Indonesia in every payment transaction or business obligations. Every act that violates this obligation is responded by the law with punishment, while the times show that there are more acts of not using the Rupiah which not only occur in border areas but also in ordinary urban areas. This article discusses how the urgency of criminalization of Rupiah protection and how criminalization was formulated. The discussion is carried out with a normative approach to provide an overview of how criminalization was formulated in a law. The conclusion is that the use of the criminalization policy has urgency to protect the sovereignty of the Rupiah because actions that attack could result in economic instability which create various other types of criminal acts. Even so, the criminalization policy has not been formulated effectively because the details of the prohibited acts are too simple so that it creates interpretive bias, especially the ultimum remedium principle is not formulated so it is worrieif that the formulation will contribute overcapacity in prison.

Keywords: *Criminalization, Sovereignty, Rupiah, Criminal Act.*

INTRODUCTION

The currency is one of the real forms of sovereignty of a country. In the Republic of Indonesia (Negara Kesatuan Republik Indonesia); the currency known as the Rupiah is used, this sovereignty indicates that the state has a legal interest in managing order in financial transactions as a legal payment instrument in its own territory without intervention by other countries or other parties (Lindeboom, 2021). In every economic system, money has the main function as a medium of exchange and several other functions as a standard of value, store of value, unit of account and standard of deferred payment (Němec et al., 2021). The economic order requires that various matters concerning money management become an order that is formulated in regulations, starting from the production, circulation, and use in society (Williams, 2014). The ability to organize the economy through the determination of currency policies shows that the country is economically sovereign; this has been guaranteed in Article 2 Section 1 Charter of the Economic Rights and Duties of States (CERDS) “*Every State has*

and shall freely exercise full permanent sovereignty, including possession, use and disposal, over all its wealth, natural resources and economic activities". The phrase economic activities can be proven through the application of the country's currency and its dominance over foreign currencies in the country itself (Baraggia & Bonelli, 2022).

The sovereignty of the *Rupiah* provides awareness or coercion for every legal subject in the territory of the Republic of Indonesia to use the *Rupiah* in transactional relations of an economic nature. The impact created from this sovereignty is the emergence of a prohibition against the act of refusing the *Rupiah* and those who carry out the prohibition will be subject to the sanctioned instrument. The sovereignty of the *Rupiah* was formalized through Law Number 7 of 2011 concerning Currency (Currency Act) in order to implement Article 23 B of the 1945 Constitution of the Republic of Indonesia (UUD 1945). The developments show that there are still various phenomena of *Rupiah* rejection, including the use of Ringgit (Malaysian currency) on Sebatik Island, Nunukan Regency which borders Malaysia (Tan & Mohamed, 2020), the use of Singapore dollars at the Golden Prawn 933 Batam restaurant which borders Singapore, and the emergence of Cafe Muamalah in Depok which uses the dinar and dirham as a transaction instrument. In the case of Golden Prawn 933 the state responded through criminal means as listed in Case No. 100/Pid.B/2015/PN Btm at the Batam District Court, the Panel of Judges examining the case has handed down a criminal verdict on the suspect Thian Tjuang alias Achuang alias Hartono in the form of imprisonment for eight months even though he does not need to live (conditional sentence) and a fine of Rp. 2,000,000,- or a subsidiary of one month's confinement.

A similar pattern is also being applied to the Muamalah Market case, Zaim Saidi as the suspect was ensnared by investigators with the main suspicion of Article 9 of Law Number 1 of 1946 concerning the criminal law regulations (the Criminal Law Regulations Act) which is threatened with a maximum imprisonment of fifteen years, while this case is still being handled at the investigation stage at the time this article was compiled. Another phenomenon that is also interesting to study, although not as significant as reported in the three cases, is the emergence of transactions using *Rupiah* conversion into special coins in tourist areas. This conversion phenomenon was found in the Lembang Floating Market and at the Banyumas Old Market. These various events gave awareness to the public that the act of not using *Rupiah* did not only occur in national border areas but also occurred in areas far from the border. Criminalization in the context of criminal law is not the same as criminalization in a populist context as reported by the press, the press tends to define criminalization as an effort by law enforcement to convict people who are considered to have violated the law, generally the nuances of the news narrated are injustice based on discrimination (Storey, 2017). Criminalization scientifically criminal law is defined as a process of determining an act of a person as an act that can be punished which ends with the formation of a law (including a regional regulation) so that the act is threatened with a sanction in the form of a crime (Herring, 2021).

Criminalization is a policy or policy, therefore the concept of its formulation contains an orientation that is more than pragmatic such as bringing down misery in the form of punishment, but also contains an ideal orientation to maintain awareness of maintaining order and mutual welfare (Aaronson & Shaffer, 2021). The criminalization policy in this case is defined as a policy in determining an act as a criminal act (Pollock, 2020). This article aims to

provide a conceptual picture of how criminalization policies can support efforts to realize *Rupiah* sovereignty. The author hopes that this article can contribute to laying the foundations for the formulation of criminalization policies for acts deemed despicable by the state, so that various legal interests can be regulated in such an orderly manner, including the interests of the state to realize sovereignty. So, this article will address the following issues. (i) What is the urgency of the criminalization policy towards the protection of *Rupiah* sovereignty? and (ii) How is the criminalization policy for the protection of *Rupiah* sovereignty formulated in the legislation? From these various descriptions, this article was compiled with the title "Criminalization Policy in Realizing *Rupiah* Sovereignty".

RESEARCH METHOD

This article is a normative research or also called doctrinal, In this study, the law is constructed as an instrument to enforce justice in the form of behavioral guidelines with the main function of regulating human behavior (Efendi et al., 2019). The research approach used is a conceptual approach to answer the first problem and a statutory approach to answer the second problem. The concept to be researched is the policy of criminalization and the sovereignty of the *Rupiah*, then the legislation studied is related to currency regulation. This study does not use primary data obtained directly from informants or sources, but focuses on secondary data in the form of primary legal materials in the form of regulations and secondary legal materials in the form of literature. The research data is compiled descriptively and systematically by basing on each problem formulation, then the data is analyzed qualitatively with a deductive reasoning model that systematically analyzes things that are general to specific.

DISCUSS AND ANALYSIS

The Urgency of Criminalization Policy on the Protection of Sovereignty

Criminal law has two functions, namely generally creating order in society in order to realize the welfare of the community and specifically protecting legal interests from acts that want to attack it or in this case tackling evil acts (Kalokathis, 2019). To be able to create protection for legal interests in the framework of order, the state determines which actions are prohibited so that order in society is maintained, the determination of such acts in Criminal Law is termed criminalization (Turner, 2019). Based on the principle of formal legality adopted in the National Criminal Law System as referred to in Article 1 paragraph (1) of the Criminal Code, criminalization is carried out by stipulating legislation; the stipulation is limited to products of legislation in the form of Laws and Regional Regulations in the Province, Regency, or City as Article 15 paragraph (1) of the Act No. 12 of 2011. Acts that can be punished in criminalization are actions that have a prohibited or despicable nature; because the act is deemed detrimental or harmful to legal interest, the dangerous measure is based on the state's decision either because of the aspirations of the people or according to the state itself is considered dangerous (Disantara et al., 2022). Legal interests to be protected in criminal law are divided into three types of interests, namely state legal interests, community legal interests, and individual legal interests (Koto, 2021b). The issue of protecting the sovereignty of the *Rupiah* is related to the interests of state law related to sustainability, peace and state security in the field of financial transactions.

Criminalization is a policy; criminal law defines policy as an effort to prevent crime (Santosa & Khisni, 2017). The criminalization policy is part of a larger policy, namely criminal policy using the means of criminal law (*penal*) or also called criminal law policy (penal policy) (Mahrus, 2012); which is interpreted as formulating a good criminal law. Criminalization is a policy that contains rational considerations in the form of an alternative, meaning that not every act must be criminalized but only a few actions with certain considerations, this is a logical thing because in implementing policies, people make judgments and make choices from the many alternatives they face (Melander, 2017). Then, how about the sovereignty? Sovereignty is defined as the highest power in a country (Arjona, 2019). In the *Kamus Besar Bahasa Indonesia*, sovereignty means the highest power or the right of lordship (over the state government). So, how about the sovereignty relating the *Rupiah*? sovereignty is defined as the power to use in the territory of the Republic of Indonesia. The sovereignty of the *Rupiah* is currently regulated in Article 21 paragraph (1) Currency Act it is regulated that the *Rupiah* is the currency in the Unitary State of the Republic of Indonesia which is used compulsorily for: (a) Every transaction that has a payment purpose; (b) Settlement of other obligations that must be met with money; and/or (c) Other financial transactions. The exception to this obligation is regulated in Article 21 paragraph (2) which is limited in nature as follows: (a) Certain transactions in the context of implementing the state budget of revenues and expenditures; (b) Receiving or granting grants from or to foreign countries; (c) International trade transactions; (d) Deposits in banks in foreign currency; or (e) International financing transactions.

Then, to support this obligation to be implemented, the Currency Act also regulates the related prohibition in Article 23 paragraph (1) in the form of a prohibition on refusing to accept *Rupiah* whose delivery is intended as payment or to settle obligations that must be fulfilled in *Rupiah* and/or for other financial transactions. Similar to obligations, this prohibition also has a limitation exception which is also regulated in Article 23 paragraph (1) in the form of doubts over the authenticity of the *Rupiah* and regulated in Article 23 paragraph (2) in the form of payment or for settlement of obligations in foreign currencies that have been agreed upon. On the other hand, the violations of the obligations and prohibitions referred to are handled by criminalization policies or criminal means as referred to in Article 33 of the Currency Act as follows: (1) Everyone who does not use *Rupiah* in: (1.) every transaction that has the purpose of payment; (2) settlement of other obligations that must be met with money; and/or (3.) other financial transactions. As referred to in Article 21, paragraph (1) shall be punished with a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). Everyone is prohibited from refusing to accept *Rupiah* whose delivery is intended as payment or to settle obligations that must be fulfilled with *Rupiah* and/or for other financial transactions in the Territory of the Unitary State of the Republic of Indonesia, except because there are doubts about the authenticity of the *Rupiah* as referred to in Article 23 shall be sentenced to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah).

Similar provisions are not found in the Criminal Code (Kitab Undang-Undang Hukum Pidana, because what is regulated in the Criminal Code is only Counterfeiting Currency and Banknotes as in Book Two of Chapter X, although the protection of *Rupiah* sovereignty with

a criminalization policy is also regulated in Law Number 1 of 1946. Regarding the Criminal Code, Article 9 regulates the following formulation that any person who manufactures an object such as currency or paper money with the intention of using it or ordering it to be used as legal tender, shall be punished by a maximum imprisonment of fifteen years. Criminal acts regulated in Article 33 paragraphs (1) and (2) of the Currency Act with Article 9 of the Criminal Law Regulations in this article are further termed criminal acts against the sovereignty of the . These articles are formally formulated so that they are also referred to as formal offenses, interpreted as the formulation of offenses that focus on their actions. Formal offenses do not question or prove how the impact of the criminal act on the sovereignty of the *rupiah*, but the problem is that the act has been committed. The Currency Act is not a Criminal Law like the Criminal Code, but in Criminal Law, there are criminal provisions so that the crime is referred to as an administrative crime. This type of crime is a manifestation of the policy of using criminal law to implement administrative law. The use of the method of formulating formal offenses against administrative provisions can be a preventive tool because it is relatively easy to prove without any aspect of consequences such as inflation or other monetary consequences, so it is hoped that the ease of proving has a significant correlation with creating warnings from the state that the public obeys. Sentencing for people who do not obey this warning is also expected to be a reminder for the second time because the repressive nature of criminal law is essentially also interpreted as a preventive measure in a broad sense.

Efforts to realize Rupiah sovereignty through the formulation of criminal acts are a form of social engineering. The state forms a written legal product to direct the public to certain changes designed as the legal product. Criminal law has a distinctive character as a command law (Oktobrian, 2022); everyone is ordered to conform to his will, so we can avoid doing this as far as possible. The legal awareness of the community determines the effectiveness of the success of the change (Hidayatin & Al Muchtar, 2020). Therefore, it is better than the public needs to be raised awareness of using the Rupiah, not through repressive efforts that prioritize criminal means but require educational efforts that are preventive in nature and foster pride. Such pride is the essence of the sovereignty of the Rupiah, as the Sixth Paragraph of the General Elucidation of the Currency Law states that the trust of the Indonesian people in the Rupiah will have an impact on the confidence of the international community in the *Rupiah* and the national economy in general so that the Rupiah has dignity, both domestically and abroad and the Rupiah is maintained stable.

On the other hand, the distrust of the Rupiah in the long term impacts the decline in the value of the Rupiah against the foreign currency dollar or known as depreciation. Rising prices in the criminology study can cause crime or criminogenic factors because economic difficulties can affect a person's mentality to carry out deviant behavior to maintain their lives, such as illegal industry or aggressive behavior (Lee, 2020). This was also reminded by the United Nations at the 6th Congress in 1980 in Caracas, Venezuela, in its resolution crime trends and crime prevention strategies that (Townley, 2019):

“Calls on all members of the United Nations to take action within their owner to eliminate conditions of life which degrade human dignity and cause crime, which includes problems of unemployment, poverty,

ignorance, racial and national discrimination and various forms of social inequality”.

So that the harmful effects of such behavior do not occur, it becomes logical to use criminal means to provide warnings so that they do not commit deviant acts and do not commit acts that result in the deviant act occurring.

Criminalization Formulation Against Rupiah Sovereignty Protection

The formulation of criminalization to protect Rupiah sovereignty is formulated in the Article 33 of the Currency Act Paragraphs (1) and (2). In those terms, everyone who does not use Rupiah in every transaction that has the purpose of payment, settlement of other obligations that must be met with money, and/or other financial transactions. Then, as referred to in Article 21 paragraph (1) Currency Act shall be sentenced to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million Rupiah). Furthermore, everyone is prohibited from refusing to accept Rupiah whose delivery is intended as payment or to settle obligations that must be fulfilled with Rupiah and/or for other financial transactions in the Territory of the Unitary State of the Republic of Indonesia, except because there are doubts about the authenticity of the Rupiah as referred to in Article 23 shall be sentenced to a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). The concept of criminalization to protect the Rupiah is also legitimized by Article 9 of the Criminal Code; as appropriate, any person who makes an object such as currency or paper money with the intention to use it or orders it to be used as a legal tender, shall be punished by a maximum imprisonment of fifteen years.

Indicators of a formulation of criminalization that has been done well can be seen from three aspects, namely aspects of action, aspects of accountability, and aspects of crime. First, aspects of action. Excepted from the Criminal Law Regulations, the formulation of criminal acts against the sovereignty of the rupiah in Article 33 paragraphs (1) and (2) of the Currency Law actually only formulates criminal sanctions, because the main actions are obligations and prohibitions are regulated in administrative provisions. The following is a total list of acts subject to censure in criminal acts against rupiah sovereignty: (a) The obligation to use rupiah in payment transactions, settlement of obligations through money (business obligation, and other financial transactions as referred to in Article 21 paragraph (1) of the Currency Act, which if violated will be subject to punishment under Article 33 paragraph (1) with a threat of a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah); (b) Prohibition of refusing rupiah in payment or business obligation as referred to in Article 23 paragraph (1) of the Currency Act, which, if done further, will be punished under Article 33 paragraph (2) with a maximum imprisonment of 1 (one)) years and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah); or (c) Making objects such as rupiah for the purpose of being used as currency as referred to in Article 9 of the Criminal Law Regulations with a maximum imprisonment of 15 (fifteen) years.

The formulation of a crime also has another function in formal criminal procedural law, namely as an evidence guide (Arief, 2017); the complexity of the formulation of an act that is determined as a disgraceful act will be linear with the complexity of its evidence in court. The formulation of obligations and prohibitions in the Currency Act seems to be formulated in a simple manner so that it is considered biased because of the ease of proving it. It needs to be

considered because such a formula can actually ensnare various simple acts such as the use of special coins in payment transactions that have occurred in the Floating Market - Lembang called Peng with a fraction of Rp. 10,000, - and Rp. 5,000,- and Pasar Kuna – Banyumas which is called a shell coin with a denomination of Rp. 2,000,-. This thought makes sense because transactions at the Golden Prawn 933 Resto with a nominal value of 12 Singapore dollars can also be punished as in Case No. 100/Pid.B/2015/PN Btm even though in the end the judge imposed a conditional sentence or a sentence that did not need to be served with certain conditions. The act of making objects such as rupiah should be regulated in the Currency Act, this is done for the effectiveness of legal communication. Partial arrangements or scattered in several regulations can make many parties including law enforcers themselves not have a comprehensive understanding of criminal acts against rupiah sovereignty. Without good legal communication, people can behave in accordance with what has become the views and values that have been institutionalized, the most feared thing is that the criminal act has not been examined by the investigator because he does not know that the information on the act that was conveyed to him is a criminal act. Criminal provisions in the Currency Act are a form of criminal law reform in the field of Rupiah sovereignty, such reforms cannot provide clear directions if the provisions in legal reform are still in partial form so that they do not become holistic.

Second, aspects of criminal liability the phrase every person in a criminal act as regulated in Article 33 paragraphs (1) and (2) of the Currency Act according to Article 1 number 19 Currency Act is defined as an individual or corporation, the subject of the crime has a modern nuance because it also regulates the corporation as a subject in contrast to Article 9 of the Criminal Code Act which uses the phrase everyone so that it cannot ensnare corporations or still has a conventional nuance. Whereas the core element in the article is to make objects such as rupiah, currency in order to run effectively needs to be made and circulated in massive amounts through significant funding, such an act is not so logical if it only regulates the subject of criminal acts limited to individuals. That because Article 9 of the Criminal Code Law is not included in the Currency Act, the corporation that commits the act cannot be punished. The modern nuance becomes less productive because it is not regulated in the law regarding under what circumstances a corporation can be punished or who represents the corporation can be punished. However, this deficiency is covered by the Supreme Court Regulation Number 13 of 2016 concerning Procedures for Handling Criminal Cases by Corporations, so that the *legal vacuum* regarding criminal liability by corporations that commit crimes against the sovereignty of the rupiah can be filled. Article 33 paragraphs (1) and (2) of the Currency Act and Article 9 of the Criminal Law Regulations do not formulate the phrase whether the form of error is intentional or negligent, although this is not so much of a problem because Criminal Law recognizes the doctrine that every element is intentionally nuanced unless stated otherwise or from history determined otherwise. **Error! Bookmark not defined.** Thus, the three acts that are criminal acts against the sovereignty of the rupiah are interpreted as acts committed intentionally by the perpetrators, intentionally being interpreted as the perpetrators intending the act and knowing or realizing what he did, whether intentionally or by negligence, actually reflects the fault of the perpetrator which is interpreted as an inner relationship between the perpetrator and his actions. **Error! Bookmark not defined.**

Third, criminal aspect. The discussion of the crime is related to the type (*strafsoort*), the severity of the crime (*strafmaat*), and how to carry out the crime (*strafmodus*). In Article 33 paragraphs (1) and (2) of the Currency Act, the type and severity of the punishment formulated is a maximum imprisonment of 1 (one) year and a maximum fine of Rp. 200,000,000.00 (two hundred million rupiah). then if this fine is not paid, then according to Article 40 paragraph (1) it is converted to imprisonment for each criminal fine of Rp. 100,000,000.00 (one hundred million rupiah) replaced with imprisonment for 2 (two) months. Corporations that commit such criminal acts can only be subject to criminal sanctions provided that the criminal threat is added by one third as referred to in Article 39 paragraph (1), while if the fine is not paid, the corporate assets and/or assets of the corporate management can be confiscated as referred to in Article 39 paragraph (2). In contrast to the Currency Act which provides for a light punishment, Article 9 of the Criminal Law Regulations stipulates a single punishment in the form of imprisonment for a maximum of 15 (fifteen) years. From this provision, it appears that the act of making objects other than rupiah is punished more severely than using the object, but both of these acts are threatened with very disproportionate penalties, too light of the threat in Article 33 paragraphs (1) and (2) of the Currency Act raises doubts that whether the act is urgent to remain convicted. Criticism of the criminal deprivation of liberty in the short term has been widely conveyed because it has an impact on overcapacity in Correctional Institutions, any country in the face of such problems cannot solve it pragmatically by building a new Penitentiary because the cost is very expensive, it is necessary to seek alternative methods to imprisonment such as criminal conditional or probation.

The criminalization policy in the protection of Rupiah sovereignty is maintained, and for this protection to be effective, it needs to be supported by an effective criminalization formulation and various prevention efforts through building awareness to be proud and believe in the Rupiah in conducting transactions. The formulation of the criminalization According to Article 39 paragraph (3) of the Currency Act, those who commit criminal acts as referred to in Article 33 may be subject to additional penalties in the form of revocation of business licenses and/or confiscation of certain goods belonging to the convict; this is not quite logical because the Currency Act is a law in the field of administration in the field of currency which should have provisions for administrative sanctions that function to precede criminal sanctions to provide understanding or education to those who violate. Criminal provisions should be designed by applying the principle of *ultimum remedium*, which means that punishment is the last law to be used if other legal instruments cannot be used or cannot function properly (Koto, 2021a). Formulating a formal offense model in a Criminal Act against Rupiah sovereignty is not appropriate if it is designed with the principle of *primum remedium* or prioritizing criminal sanctions because the public may question why actions have not yet had who should punish an impact (Ramadhani, 2018). Criminalization is a policy that is not formulated for pragmatic purposes such as merely punishing disgraceful acts (Ramadhani & Lubis, 2021); this orientation is dangerous because it can cause long-term effects in the form of overcapacity in prisons, considering that crimes against the sovereignty of the Rupiah are formulated with criminal threats of restraining independence. In imprisonment or confinement, including fines, which can convert to confinement. The uncontrolled development of increasing criminality can be caused by the wrong type of

sanction being chosen and stipulated. At least the formulation of a crime in the law that is not appropriate can be a factor in the emergence and development of crime policy needs to be updated by adopting the following points: (1) To avoid increasing overcapacity, it is necessary to regulate law enforcement based on the *ultimum remedium* strictly; (2) Criminal provisions outside the Currency Law and include them in the Amendment to the Currency Law so that there are no more partial provisions; (3) Adjusting the weight of criminal threats that are more proportional between crimes; (4) If the short sentence is maintained, it needs to be supported by conditional criminal provisions.

CLOSURE

Conclusion

Protection of the sovereignty of the Rupiah is urgent to be protected with a criminalization policy because omission of actions that attack the sovereignty of the Rupiah can impact the economic order, which can further become a criminogenic factor. This act is disgraceful because it attacks the state's legal interests in the form of the sustainability of the economic order, so the choice to introduce a criminalization policy against the protection of rupiah sovereignty is logical. The criminalization policy towards the protection of rupiah sovereignty has not been formulated effectively because the types of criminalized acts are still partial because they are regulated not only in the currency act but also in the criminal law regulations. The formulation has regulated the need for criminal acts by accommodating subjects in the form of individuals and corporations. The effectiveness of criminal threats in criminal acts against rupiah sovereignty as formulated in the currency act is doubtful, and it is feared that it will increase the burden on the Correctional Institution because it becomes an overcapacity factor because it is not designed with the *ultimum remedium* principle.

Suggestion

The criminalization policy in the protection of Rupiah sovereignty is maintained, and for this protection to be effective, it needs to be supported by an effective criminalization formulation and various prevention efforts through building awareness to be proud and believe in the Rupiah in conducting transactions. The formulation of the criminalization policy needs to be updated by adopting the following points: (1) To avoid increasing overcapacity, it is necessary to regulate law enforcement based on the *ultimum remedium* strictly; (2) Criminal provisions outside the Currency Act and include them in the Amendment to the Currency Act so that there are no more partial provisions; (3) Adjusting the weight of criminal threats that are more proportional between crimes; (4) If the short sentence is maintained, it needs to be supported by conditional criminal provisions.

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