

DETERMINANTS OF LEGAL CERTAINTY: A SYSTEMATIC LITERATURE REVIEW

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Abstract

The purpose of this research is to review the literatures related to the determinants of legal certainty. The method used is a systematic literature review with the PRISMA approach. Scopus was chosen as the source of information because Scopus is currently the largest and reputable scientific database. We collected data in online databases with large repositories of academic studies, journal articles, written in English and fully accessible by the authors. A predefined string was used to extract 295 articles, and the results were reviewed and checked. The results of this study found more holistic factors including political, economic, social, culture, legal and technology factors. There are 7 (seven) determinants of legal certainty: independent judicial system, legal consistency and clarity, quality human resources, existence of government authority, source of funding through revenue (municipal) bonds, legal culture and technology. The implication of this study discussed latter.

Keywords: Legal Certainty, Determinant, Systematic Literature Review

1. INTRODUCTION

Legal certainty is a basic concept in the legal system which is a fundamental principle in realizing justice and security in a country (Lei, 2017). Legal certainty provides stability, clarity and consistency in the application of law. This refers to the degree to which an individual believes in the ability of the legal system to provide clear and consistent rules that can be relied upon to guide individual behavior (Demin, 2020).

Legal certainty is based on the idea that law should be clear, consistent and easily accessible so that people can understand their legal obligations and rights. With another. this concept includes that law must be easy to understand and can be applied consistently and fairly without discrimination against anyone. In the legal context, legal certainty also means that the rule of law must be understood by all people and can be applied consistently and transparently (Jacobs, 2018).

Legal certainty is very important to maintain the rule of law, which is the basis of a democratic society. This provides stability and predictability within the legal system, which helps prevent arbitrary or unfair decisions (Ebbesson, 2010). In addition, legal certainty also allows individuals to plan their actions and make informed decisions, without the risk of unexpected legal consequences.

Without legal certainty, people will experience uncertainty and confusion about what is expected of them and how they can comply with the law (Kuyucu, 2014). This can result in

people not being sure about their rights and obligations, which can lead to social tensions and conflict.

In the business context, legal certainty is also important because companies need legal certainty to be able to invest and operate in international markets (Braithwaite, 2005). Without legal certainty, investors will not feel confident about investing in a country or region. This can hinder economic growth and slow down development. As a result, businesses may face unexpected risks and experience difficulties in making transactions and making the right business decisions (Li, 2014). Legal certainty is essential to promote business growth and development, as it provides a stable and predictable environment for business activities (Tapia-Hoffmann, 2021).

Legal certainty involves many factors, including legal clarity and consistency (Moroni et al., 2020). The law must be easy to understand and apply, and consistent in its application. This ensures that individuals and businesses can understand and rely on the law in making decisions and planning their actions. In addition, the independence and impartiality of the judiciary is also very important to promote legal certainty. An independent and impartial judicial system ensures that the law is applied fairly and does not discriminate (Andersen, 2020).

This is important to ensure political and economic stability, as well as to increase public confidence in the legal system. The competence and professionalism of legal professionals is also an important factor in ensuring legal certainty (Boon, 2010). Skilled and trained legal professionals can understand and apply the law properly and effectively, and ensure that legal certainty is promoted in every aspect of people's lives. Effective law enforcement is also important to ensure legal certainty. Laws must be strictly and consistently enforced, and lawbreakers must be punished fairly. This helps create a stable and predictable legal environment for society (Portuese et al., 2017).

Transparency and accountability of government agencies are also important factors in promoting legal certainty (Amanze et al., 2022). Government agencies must be transparent in their decision-making processes and in carrying out their functions, and must be held accountable for their actions. This ensures that governments are accountable for their policies and decisions, and can influence the policy-making process more effectively. In addition, the protection of human rights is also an important factor in ensuring legal certainty (Paunio, 2009).

Human rights recognized by law must be effectively protected by the legal system. Violations of human rights can threaten legal certainty and affect public confidence in the legal system. Openness and public participation are also important in ensuring legal certainty. Communities should have easy access to legal information and should be given opportunities to participate in policy-making and decision-making processes (Tisdall & Davis, 2004). This shows that the law is made and implemented in a transparent and accountable manner, and can be understood and accepted by society.

In Indonesia, legal certainty has been regulated in various laws and regulations, including the 1945 Constitution and the Criminal Code. However, legal certainty in Indonesia still faces various challenges, including injustice in the justice system. Legal decisions that are not in

favor of justice can reduce public trust in legal institutions. Legal decisions that favor certain interests can cause people to feel unfair and exacerbate situations of legal uncertainty (Mullally, 2009). This can be caused by social and economic disparities. In an unjust legal system, only a few people have access to the law, while others do not. If left unchecked, public trust in legal institutions will decrease and eventually have an impact on the stability of a country.

In addition, challenges related to the complexity of the legal system are difficult for the community to understand where rules or legal language that are too complicated can cause people to have difficulty realizing their rights and obligations (Raustiala & Victor, 2007). As a result, people cannot fight for their rights properly and do not understand how to protect themselves from unfair legal actions. On the other hand, the community can also cause inappropriate and unlawful legal actions. This can happen because people do not understand the legal consequences of their actions, so that these actions have the potential to harm others or harm themselves (Sheavly & Register, 2007).

Other challenges such as the lack of government transparency and accountability, especially corruption, can affect the quality of legal certainty in a country (Basu, 2004). Injustice in law enforcement and special treatment for certain people can result from corrupt practices in the legal system. Corruption practices can hinder the creation of legal certainty because they can influence government decisions and actions that should be based on the principles of law and justice (Rose–Ackerman, 2008). Corruption can result in violations of citizens' rights, inequality in legal treatment, and makes people lose confidence in legal institutions. Limited public access to information relating to government policies and actions. Information that is not transparent and not available to the public can lead to legal uncertainty and injustice (Malin, 2020), as well as reinforce arbitrary power and government decisions. The government is not always responsible for the decisions it takes and the actions it takes in legal matters.

In an effort to increase legal certainty in Indonesia, several actions can be taken, such as increasing government transparency and accountability, strengthening the independence and professionalism of the judicial system, and strengthening the protection of human rights and intellectual property rights (Swinburn et al., 2015). The community must also continue to increase awareness of the importance of legal certainty and continue to take part in decision-making and policy-making processes related to law. In other words, the Government and society must continue to work together to ensure that the law is applied consistently, fairly and effectively, as well as to promote legal certainty in all aspects of people's lives.

Legal certainty is still an important issue in many countries around the world. Legal certainty is a basic principle in the legal system and is an important foundation for a civilized and civilized society. Legal certainty provides assurance that the law will be applied fairly and consistently, so that people can plan their lives better and have security in the actions and decisions they make. Without legal certainty, society will experience uncertainty and no one can rely on for decision making. This can lead to distrust of the legal system, emergence of corruption and economic instability. Therefore, it is important to know the determinants of legal certainty so that legal certainty can be realized.

Unfortunately, research investigating the determinants or factors that influence legal certainty is still very limited. Most of the research emphasize only few factors such as economic or social factors. There is lack of research to provide more holistic way. To the best of our knowledge, there is no systematic literature review conducted on exploring the determinant or factors that influence the legal certainty.

Thus, the purpose of this research is to examine and examine the determinants of legal certainty using a systematic literature review with PRISMA approach. Scopus was chosen as information source since Scopus is the largest and reputable database for scientific literatures. This research is organized as follows: Section 2 provides the methodology and, followed by section 3, shows the study's results and discussion. The Conclusion is presented in section 4.

2. METHODS

This systematic review was conducted from February 2023 to March 2023 using PRISMA reporting guidelines. According to these guidelines, there are several steps in this study: 1) defining eligibility criteria; 2) defining information sources; 3) study selection; 4) data collection process. Figure 1 explains the steps of our work in conducting systematic review based on PRISMA.

2.1 Defining Eligibility Criteria

The following inclusion criteria (IC) were defined for the review guidelines:

IC1: Article written in English;

IC2: Original and peer-reviewed Journals; and

IC3: Studies aimed at investigating factors that influence the legal certainty.

Only articles written in English (IC1) were selected, since English is a common language used by researchers in the scientific community. Original and peer-reviewed journals were chosen because this is achieved to obtain an excellent scientific contribution solely sourced from peer-reviewed journals. Thus, proceedings or conference papers), book chapters, books, newspapers, letters, editorials are not included in the dataset. IC3 was included to answer the research questions, that should discuss the determinant or factors of legal certainty.

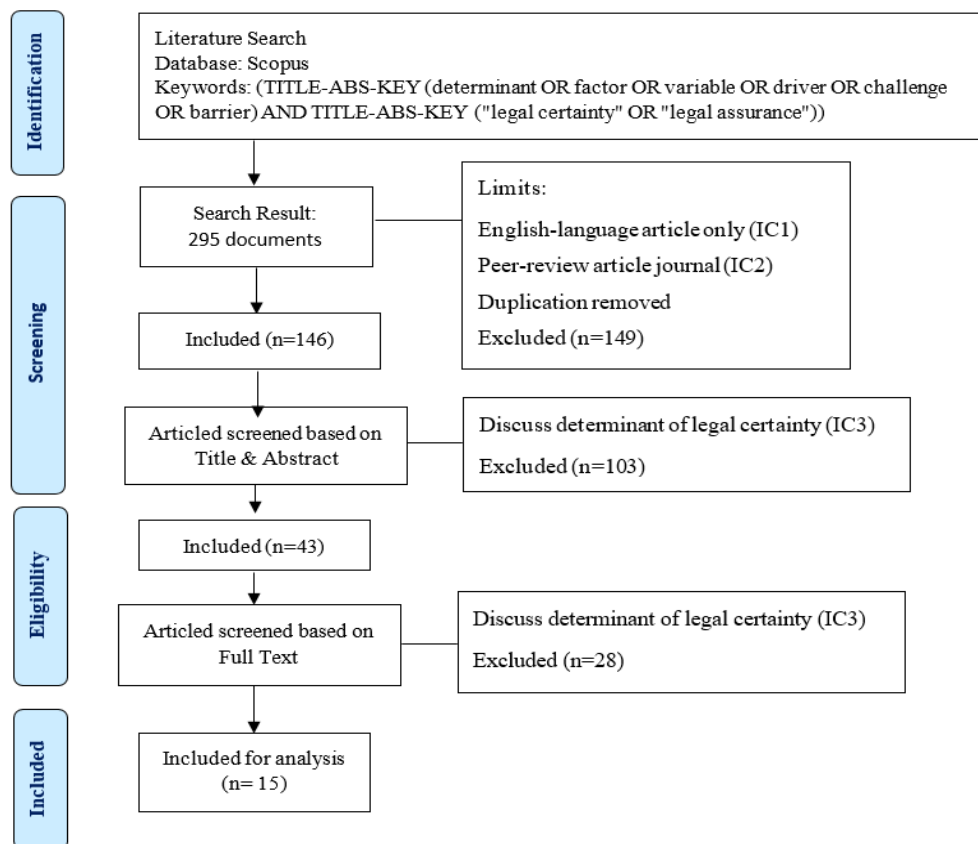


Figure 1: PRISMA Flow diagram of the search strategy (Zakaria et al., 2021)

2.2 Defining Information Source

The search for information was carried out on an online database with largest repositories of academic studies, namely Scopus, with more than 23,500 peer-reviewed journals. Not fully accessible articles were also excluded in this research.

2.3 Study Selection

Study selection was conducted in three stages as follows:

1. Using search keywords following the research objectives, namely, the determinants of legal certainty or other keywords of similar reports (TITLE-ABS-KEY (determinant OR factor OR variable OR driver OR challenge OR barrier) AND TITLE-ABS-KEY ("legal certainty" OR "legal assurance")) AND (LIMIT-TO (DOCTYPE , "ar")) AND (LIMIT-TO (LANGUAGE , "English")) AND (LIMIT-TO (SRCTYPE , "j"))
2. Exploring and selecting the article titles and abstracts on the basis of the inclusion criteria.
3. Exploring and selecting all articles not eliminated in the previous selection by fully reading all articles while adhering to the eligibility criteria.

2.4. Data Collection Process

The data were collected manually by content analysis-based data extraction, including the article type, journal name, year of publication, topic, title, research methodology, respondents/research data, country of research location, variables related to determinants of legal certainty and research results in the form of indicators of legal certainty.

3. RESULT AND DISCUSSION

There are 295 articles are taken from three databases, namely Scopus. 149 non-full text articles were excluded since they did not fulfil the criteria such as English language (IC1), journal articles (IC2) and duplication were also removed. Then only 146 non-full text articles were included in screening phase as presented in Figure 1. Furthermore, 146 non-full text articles were read and filtered based on their title and abstract, resulted 43 non-full text articles that relevant to the research topic. Thus, about 103 non-full text articles were excluded. In the eligibility phase, 43 articles were retained because they were full text articles. Then, the full text article is read and filtered back or assessed for feasibility, so 28 full text articles were removed because the article is irrelevant or do not discuss the determinant of legal certainty (IC3). It is inappropriate to the topic or does not match the research questions. From the full text and non-duplicate articles, 15 studies meet the inclusion criteria for analysis in discussing the determinant of legal certainty.

Research related to the determinants of legal certainty or legal certainty is very important to understand what factors influence legal certainty in a country. This research can help the government, legal institutions, and society in general to identify and improve the factors that affect legal certainty, so as to create a more reliable and trusted legal system. The following are several factors that have been identified through a systematic review related to legal certainty.

3.1 Independent Judicial System

The relationship between an independent justice system and legal certainty is very close because the independence of the justice system is an important prerequisite in ensuring legal certainty and the principle of legal certainty is realized in practice. An independent judicial system guarantees that legal decisions taken are based on objective, transparent legal rules and are not influenced by interests or pressure from any party. In this case, the independence of judges and courts is very important to ensure that legal decisions taken can be trusted and fair for all parties involved (Azheri, 2018).

If the justice system is not independent, the principle of legal certainty will be disrupted and legal certainty will be insecure. This can be caused by social and economic disparities. In an unfair legal system, only a handful of people can gain access to law, while other people do not. People will lose confidence in the legal system and question the fairness of law enforcement. Therefore, an independent justice system is needed to ensure legal certainty and the principle of legal certainty is realized in practice (Guillaume, 2011). Communities must feel confident and confident that legal decisions are taken based on objective and transparent legal rules so

that their rights can be recognized and protected fairly. In this case, the independence of the justice system and the principle of legal certainty are interrelated and influence each other in maintaining public confidence in the existing legal system.

In a global context, the independence of the judicial system is also an important factor in strengthening a country's position within the framework of international relations. This can be seen from the level of trust given by the international community to a country that has an independent justice system. A country that has an independent justice system will be valued more by the international community because it is considered to have strong legal certainty principles and is implemented consistently. An independent justice system is an important prerequisite in realizing legal certainty, playing an important role in strengthening good governance, protecting human rights, and fighting corruption in a country (Haynes, 2013). Therefore, the independence of the justice system must be a top priority in developing a legal system that functions effectively and efficiently.

3.2 Legal Consistency and Clarity

Legal consistency and clarity have a very important influence on the creation of legal certainty. Legal consistency refers to the principle that law must be applied consistently and in line with higher legal principles, such as the constitution, international regulations and principles of justice. When the law is applied consistently, individuals and businesses have confidence that the actions or decisions they make will not conflict with the law. This allows them to make long-term business or personal decisions without worrying about sudden changes in the interpretation or application of the law (Atallah, 2015).

Meanwhile, legal clarity refers to the ability of law to be easily understood by individuals and businesses. Laws should be written in clear and easy-to-understand language, so that individuals and businesses can understand their obligations and rights well. When the law is unclear, individuals and businesses may be concerned about an action or decision they are making because they are not sure whether it is lawful or not. In other words, legal clarity ensures that individuals or businesses can easily understand what is expected of them and what they need to do to comply with the law (Carrillo et al., 2021).

Consistent and clear laws or regulations can help create a stable and predictable legal environment in which individuals and businesses can act with confidence and without fear of breaking the law. In other words, when legal consistency and clarity is upheld, society can also have high awareness regarding their obligations and rights. This creates legal certainty which is very important to create a conducive environment for business growth and economic activity in general. Conversely, when legal consistency and clarity is not maintained properly, individuals and businesses feel unsure about the legal consequences of their actions or decisions, which can hinder innovation and economic growth (Yamin et al., 2021). Therefore, legal consistency and clarity is very important to create the legal certainty needed to create a conducive environment for business growth and economic activity.

3.3 Quality Human Resources

The influence of the quality of human resources on legal certainty, especially in the field of justice, can be seen from various aspects, one of which is professionalism and integrity. Professional human resources with integrity will carry out their duties and responsibilities seriously and pay attention to aspects of fairness and objectivity (Götze & Olsen, 2011). They will also pay attention to ethical and moral aspects in carrying out their duties, so as to avoid violations or abuse of authority. In the judicial context, professional human resources with integrity will provide fair and objective decisions in accordance with applicable law. They will also carry out their duties without any influence or pressure from other parties, so that they can make decisions that are independent and free from certain interests. Efforts to increase the professionalism and integrity of human resources in the field of justice can be carried out by providing training, strict supervision, and applying a code of ethics and regulations that strengthen integrity in the judiciary.

In addition to the professionalism aspect, the quality of human resources is also determined from the aspect of knowledge and skills. In the field of justice, human resources such as judges, lawyers, prosecutors, legal academics who have adequate knowledge and skills will be able to master legal material properly, so that they can provide appropriate considerations in making decisions. In addition, they will also be able to properly and accurately apply applicable legal principles in every decision they make. In the context of collaboration, increasing the knowledge of the actors involved is one way to encourage legal certainty among actors which is a fundamental factor in collaborative collaboration activities (Bürger & Fiates, 2021).

3.4 Government Authority

Government authorities have an important role in ensuring legal certainty in Indonesia. This is related to the power possessed by the government in making policies and issuing legal regulations that apply in Indonesia (Gao & Li, 2021). The influence of government authority on legal certainty can be explained through the following aspects, namely the making of legal regulations: The government has the authority to make legal regulations that apply in Indonesia. These regulations are made with the aim of providing clear guidelines and rules in carrying out activities in the community. With the existence of clear and easy-to-understand legal regulations, the public can understand their rights and obligations in carrying out their daily activities, so as to increase legal certainty in Indonesia; Equitable law enforcement: The government must also ensure that law enforcement is carried out in a fair and proportionate manner, so as not to raise doubts or distrust of the public towards law enforcement agencies. In this case, the government must strengthen the independence and professionalism of law enforcement agencies, as well as guarantee human rights and community rights in the law enforcement process; Disclosure of information: The government has an obligation to provide accurate and clear information regarding the applicable laws and regulations in Indonesia. This aspect of information transparency is important to ensure that the public has access to legal information, judicial decisions and regulations so as to increase legal certainty in Indonesia (Oomen et al., 2021).

In the Indonesian context, efforts to strengthen government authority can be carried out in several ways, including through bureaucratic reform, improving the quality of education and training for government officials, increasing the quality and capacity of law enforcement agencies, and increasing public access to legal information (Obidzinski & Dermawan, 2010). In this way, it is hoped that the government authority can increase legal certainty for the community.

3.5 Revenue (Municipal) Bond

Revenue bond or municipal bond is a type of bond issued by local governments or public bodies to finance public projects, such as the construction of roads, bridges, public buildings, and so on. The issuance of these bonds is an alternative source of funding for the government and public bodies which can attract private investors to invest their capital in these projects. (Schlemmer, 2015). The influence of revenue bonds or municipal bonds on legal certainty can be explained as follows: Providing funding certainty: Issuance of revenue bonds or municipal bonds can provide funding certainty for the government and public agencies in implementing public projects.

With sufficient funding, the government and public bodies can carry out public projects in a more planned and orderly manner, so as to guarantee certainty and order in the implementation of these projects; Increase investor confidence: Issuance of revenue bonds or municipal bonds can also increase investor confidence in the government and public bodies, because these bonds are guaranteed by the assets of public projects that are being or will be undertaken. This can help increase investor confidence in investing in public projects and strengthen the position of the government or public bodies in carrying out public policies and projects; Guarantee long-term availability of funds: Revenue bonds or municipal bonds can also provide long-term financial security for governments and public agencies to implement public projects that require a longer time to complete.

With the existence of these long-term funds, the government and public agencies can run these projects more efficiently, so as to ensure certainty and smooth implementation of these projects; Maintaining financial stability: Revenue bonds or municipal bonds can also help maintain financial stability for the government and public bodies, because the source of funding from these bonds is relatively stable and reliable over a long period of time. In this case, the government or public agency can manage finances better and can maintain the financial stability needed to carry out public policies effectively. (O'Donnell, 2005).

However, the influence of revenue bonds or municipal bonds on legal certainty must also be balanced with adequate supervision and regulation. This is important to avoid misuse of funds or legal violations that could undermine investors' and the public's trust in the government or public agency that issues the bonds.

3.6 Legal Culture

Legal culture can affect legal certainty in a country. Legal culture includes values, norms, and beliefs related to the law and justice system in a country. Some cultural factors that can

influence legal certainty include Compliance with the law: If people and business people have a habit of obeying existing laws and norms, then legal certainty can be guaranteed. Law-abiding people tend to feel safe and protected by law, so they believe more in legal certainty; Confidence in the justice system: If people have high confidence in the justice system, they will feel more secure and believe in legal certainty. Conversely, if the public has low confidence in the justice system, then trust in legal certainty will decrease; Government policies: Legal culture can influence government policies in enforcing the law and providing legal protection to citizens. Countries that have a culture that values justice and legal certainty tend to enforce the law more and provide legal protection to the community; Levels of corruption: High levels of corruption can undermine the justice system and make people doubt the rule of law. Therefore, countries that have an anti-corruption culture tend to have a higher level of legal certainty.

In this case, an understanding of the legal culture that exists in a country can help the government and legal institutions to increase legal certainty. By strengthening the values that support legal certainty, such as ownership of the law, justice, integrity and anti-corruption, the state can create a more conducive environment for legal certainty. Conversely, if the existing legal culture in a country does not support legal certainty, then the country needs to make cultural changes for the better. For example, the legal culture in France has contributed to an emphasis on the formal concept of equality in law, where the concept of discrimination is irrelevant (Wallace, 1999).

3.7 Information Technology

Information technology has a significant influence on legal certainty. In today's digital era, technology has affected almost all aspects of life, including in the legal field. First, technology can facilitate access to legal information. With the advent of the internet and search technology, one can easily find information about laws, regulations and court decisions. This can increase transparency and ensure that everyone has equal access to legal information. Second, technology can also facilitate legal processes, such as online courts and automated justice systems. Online courts can allow trials to be conducted remotely, which can reduce costs and time in litigation. An automated justice system can ensure that all legal processes are conducted fairly and efficiently, and can reduce the risk of human error (Gao & Li, 2021).

However, on the other hand, technology can also be a challenge for legal certainty. One of the main challenges is the technological gap between individuals, companies and countries. This can affect access to legal information and affect people's ability to comply with legal requirements. In addition, technology can also create new problems in the field of law, such as cyber-crimes and violations of intellectual property rights. This can make existing laws and regulations ineffective or inappropriate. Overall, technology can have both positive and negative impacts on legal certainty. Therefore, it is very important to continue to adapt to technological developments and ensure that existing regulations and laws remain relevant and effective.

4. CONCLUSION

Based on the explanation above, it can be concluded that the concept of legal certainty has a very important role in the legal system in Indonesia. Legal certainty can provide a sense of security and comfort for the community in carrying out their activities, as well as provide confidence in the legal system and institutions involved in law enforcement. Based on the results of a systematic literature review, it can be obtained five determinants or factors that influence the creation of legal certainty, namely an independent justice system, legal consistency and clarity, quality human resources, existence of government authority, sources of funding through revenue bonds or municipal bonds, legal culture and information technology. The contribution of this research is to fill in the gaps in the literature on the determinants of legal certainty which includes factors as a whole including political, economic, social, culture, law and technology factors.

The impact of legal uncertainty can be very detrimental to society and the state, such as loss of investment and employment, increased transaction costs, and loss of confidence in the legal system and the institutions involved in law enforcement. Therefore, there needs to be continuous efforts to create and strengthen legal certainty in Indonesia. This effort can be carried out through legal reform, improving the quality of human resources involved in law enforcement, strengthening the role of government authorities, and increasing transparency and accountability in the implementation of public policies. With the creation of good legal certainty, it is hoped that it can encourage economic growth and people's welfare, as well as strengthen Indonesia's position in the eyes of the world as a country that has a strong and reliable legal system. The implication of this study is research related to the determinants of legal certainty or legal certainty is very important to understand what factors influence legal certainty in a country. This research can help the government, legal institutions, and society in general to identify and improve the factors that affect legal certainty, so as to create a more reliable and trusted legal system.

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