

From the Accused to a Promoter: Indonesia's Human Rights Diplomacy in the Post-Suharto Era

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ABSTRACT

This article analyses Indonesia's conduct of human rights diplomacy post-Suharto era, starting from the presidency of B.J. Habibie to Susilo Bambang Yudhoyono. The study aims to identify how Indonesia's foreign policy instruments, specifically human rights diplomacy, have been utilized on the international political stage to achieve Indonesia's national interests during that period. Unlike the previous periods, Indonesia's general attitude towards and policies governing human rights tend to be more active despite unresolved domestic human rights issues, evident from its various human rights advocacy efforts in regional and international forums. If previously Indonesia was accused of some of the most severe human rights violations, post-Suharto Indonesia has escaped this negative stigma, having strengthened its national interest while protecting, fulfilling, and promoting human rights at both regional and international levels.

Keywords: *Indonesia, human rights, diplomacy, post-Suharto, international forums, ASEAN, Rohingya*

Artikel ini menganalisis pelaksanaan diplomasi kemanusiaan pada era pascapemerintahan Presiden Suharto, mulai dari era kepresidenan B. J. Habibie hingga Susilo Bambang Yudhoyono. Studi ini bertujuan untuk mengidentifikasi bagaimana instrumen kebijakan luar negeri Indonesia, secara khusus diplomasi hak asasi manusia telah diimplementasikan dalam tatanan politik internasional untuk mencapai kepentingan nasional Indonesia dalam era terkait. Berbeda dengan periode-periode sebelumnya, perilaku dan kebijakan Indonesia terhadap hak asasi manusia cenderung lebih aktif, terlepas dari adanya isu-isu kemanusiaan pada tingkat domestik yang masih belum terselesaikan, melalui berbagai upaya advokasi hak asasi manusia di forum regional dan internasional. Apabila sebelumnya Indonesia memperoleh berbagai tuduhan serius terkait kasus pelanggaran hak asasi manusia, maka Indonesia pasca-Suharto telah berhasil keluar dari stigma negatif tersebut, dengan memperkuat kepentingan nasionalnya sembari melindungi, memenuhi dan mempromosikan hak asasi manusia pada tingkat regional dan internasional.

Kata-kata Kunci: *Indonesia, hak asasi manusia, diplomasi, pasca-Suharto, forum internasional, ASEAN, Rohingya*

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In the past three decades or more, human rights have become one of the issues which have attracted the most attention from the international community. Along with other issues, such as the environment, disease and outbreaks, security and terrorism, ethnic conflicts, refugees, and non-traditional security, human rights have always been a fixed agenda in various forums both regionally and globally (Weber and Smith 2002). For example, the issue of human rights has become one of the fixed agendas to be discussed at meetings of the United Nations (UN), World Bank, International Monetary Fund (IMF), European Union (EU), and Association of Southeast Asian Nations (ASEAN) and others (Alston and Robinson 2005; Cassese 2005).

A majority of countries in the world, for a variety of reasons, have ratified numerous primary international human rights instruments and adopted them into their legal, social, political, and economic systems. Although the results have not been satisfactory in some cases, these countries have generally also attempted to implement these standards in their political, economic, legal, and social life (Clarence 2001). To protect, respect, and fulfill the human rights of its citizens, for example, they issue various regulations and laws relating to human rights and the establishment of various institutions, both by the government and civil society (Alston and Robinson 2005; Tetzlaff 1993; Lubis 2005).

Indonesia post-Suharto has also demonstrated the will and commitment (Inayati 2002) to respect, protect, fulfill and promote the human rights of its citizens according to the People's Consultative Assembly XVII/1998 (1998) and the Presidential Decree No. 129 year 1998 on National Human Rights Action Plan (Wiratman 2007). Furthermore, in addition to ratifying the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) in 1958, and the International Convention on the Rights of the Child (CRoC) in 1990, post-Suharto Indonesia has been active in ratifying other major international human rights conventions and covenants. For example, it ratified the International Convention against Torture (CAT) in 1998. A year later, in 1999, it ratified the International Convention on the Elimination of All Forms of Racial Discrimination (CERD). Furthermore, by the end of 2005, Indonesia had ratified two important covenants of international

human rights, the International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social, and Cultural Rights (ICESCR). Lastly, Indonesia also ratified the International Convention on Migrant Workers (ICMW) in 2012.

Indonesia has also been quite productive in issuing regulations and laws to ensure respect, protection, fulfillment, and promotion of human rights domestically (Wuryandari 2008). For example, in 1999, Indonesia issued Law No. 39 of 1999 concerning Human Rights, followed by Law No. 26/2000 on human rights courts 2000. Furthermore, through an amendment process in 2000, Indonesia included articles about human rights in its Constitution. Besides, Indonesia has also succeeded in establishing various human rights institutions such as the National Commission on Human Rights; the Ministry of Human Rights, which is now fully integrated as part of the Ministry of Law and Human Rights; the National Ombudsman Institute; the Ad Hoc Human Rights Court; the Commission for Child Protection; and the National Commission on Violence against Women. Furthermore, notwithstanding the controversies (Cohen 2004) and accusations of inefficiency (Gultom 2010), Indonesia has approached several serious human rights violations through the judicial process, such as cases of human rights violations in Aceh, cases of human rights violations in East Timor, and the tragedy of May 1998.

Indonesia has also promoted human rights protection and fulfillment, especially in the UN and ASEAN. For example, Indonesia first took the initiative to propose the inclusion of essential elements such as democratization and respect for and the enforcement of human rights in political and security cooperation, which was then outlined in the ASEAN Charter and ASEAN Political-Security Cooperation Blueprint. Indonesia was also active in voicing the importance of the establishment of a regional (ASEAN) human rights body, which was then successfully realized as the ASEAN Intergovernmental Commission on Human Rights (AICHR) and various related agreements (Wirajuda 2007).

Following the above notion, this article will answer the following questions: what forms of and how human rights diplomacy has Indonesia carried out in the various international forums, especially

in the UN and ASEAN? and to what extent is Indonesian human rights diplomacy deemed successful, both at the regional and international levels?

Indonesia's Human Rights Diplomacy at the United Nations

Human rights diplomacy is generally understood as the utilization of diplomacy, negotiation, and persuasion to protect and promote human rights. This action involves strategies to unite various actors whose achievable goals and interests regarding human rights differ from one another. Thus, human rights diplomacy intends to persuade or invite other actors to take the actions needed to advance the implementation of international human rights principles and norms and prevent them from taking actions contrary to the norms and the human rights principles (O'Flaherty et al. 2011).

Referring to the definition of human rights diplomacy above, it can be said that throughout the post-Suharto era, Indonesia has appeared to be relatively active in conducting human rights diplomacy. At the international level, the main "battlefield" of Indonesia's human rights diplomacy is at the UN, particularly at the UN Human Rights Commission (which was changed to the UN Human Rights Council on 15 March 2006 (Mertus 2005)). This institution's struggle for human rights diplomacy began when it became an active member of the UN Human Rights Commission in 1991. Indonesia's entry into the UN Human Rights Commission was in response to pressure from the international community (National Commission on Human Rights 2001), especially with a note to the cases of alleged human rights violations in East Timor (Permanent Mission of the Republic of Indonesia to the United Nations, World Trade Organization and Other International Organizations 2006). Therefore, the inclusion as a member of the UN Human Rights Commission was initially more a defensive mechanism than international signaling. It was only after the 1990s that Indonesia began to view the UN Human Rights Commission as an essential and strategic forum for Indonesia's foreign policy on human rights. The forum not only played the role of fending off attacks and pressure on the issue of human rights. Ultimately, it ventured further

by raising awareness of the importance of respecting, protecting, promoting, and fulfilling domestic human rights.

There are several important issues relating to human rights which Indonesia fought for through the Commission. Of all the human rights issues disputed at the UN Human Rights Commission, the issue of the alleged human rights violations in East Timor was most raised and loudly questioned by outsiders against Indonesia towards the end of the New Order (Manan 2008). Therefore, it is not surprising that Indonesia's human rights diplomacy at the beginning of the Reformation era in the UN Human Rights Commission focused on dealing with attacks or external pressure on the human rights issue in East Timor (Dunne et al. 2007).

Severe criticism of Indonesia regarding the human rights issue began when the Santa Cruz incident occurred in Dili on 12 November 1991 (ELSAM 2002). According to the Commission for Truth and Reconciliation of East Timor, the incident killed at least 200 civilians. The investigation of the Commission concluded that at least 72 TNI officers were involved in the incident (Commission for Reception, Truth and Reconciliation for East Timor 2001). The Santa Cruz incident invited strong reactions from the international community. For example, protests came from the United States and members of the Inter-Governmental Group on Indonesia (IGGI). They did not only condemn verbally. This verbal condemnation was followed by discontinuation of the International Military and Education Training (IMET) program (Manan 2008). Before the tragedy of Santa Cruz had subsided, Indonesia was yet again confronted with violations in the aftermath of the 1999 referendum of East Timor. The violence was allegedly committed by pro-integration militias of the Indonesian military. The international community saw it as a form of gross human rights violations and crimes against humanity. As a result, Indonesia was accused of genocide based on Security Council Resolution 1262 (1999).

Pressure came from the UN Security Council and the UN Human Rights Commission (Sujatmoko 2005). On 23-27 September 1999, the Commission held a Special Session on the situation in East Timor. After a long and complex process, the Special Session adopted Resolution Number 1999/S-4/1, bringing the East Timor case

to international processes. Furthermore, the UN Human Rights Commission demanded that the Indonesian government ensure those responsible for East Timor's gross human rights violations be brought to justice immediately (Amnesty International 1999). The UN Human Rights Commission established the International Independent Inquiry based on Security Council Resolution 1262.

Indonesia strongly rejected the efforts of the UN Commission. It convinced the international community that it would take legal responsibility through its national legal processes, as requested by the UN Human Rights Commission (Permanent Mission of the Republic of Indonesia to the United Nations, World Trade Organization, and Other International Organizations 2006). With the National Commission on Human Rights, it established the Commission on the Investigation of Human Rights Violations in East Timor (KPP-HAM) (National Commission on Human Rights 1998) on 22 September 1999, with a term of office commencing from 23 September 1999 to the end of December 1999, which was later extended to 31 January 2000.

In its report issued on 31 January 2000, KPP-HAM gathered facts and evidence from the field. This fact-finding effort showed strong indications that gross human rights violations had taken place in East Timor and were carried out systematically, planned, large-scale, and broadly. The condition took the form of mass killings, torture, ill-treatment, forced disappearance, violence against women and children, forced displacement, scorching of land, and destruction of property. All constitute crimes against humanity. In the end, KKP-HAM recommended that the government establish a Human Rights Court authorized to hear the cases of human rights violations and crimes against humanity which referred to national and international law (Commission for Reception, Truth and Reconciliation 2001).

In response to these external pressures and from within, the government issued Law Number 39 the Year 1999 concerning Human Rights on 23 September 1999 and Law Number 26 the Year 2000 on the Human Rights Court on 23 November 2000. Based on these two laws, Indonesia formed the Ad Hoc Human Rights Court, established on 23 April 2001. Then, Indonesia established a Commission on Truth and Friendship (KKP) or Commission on

Truth and Friendship (CTF) and urged an immediate Ad Hoc Human Rights Court to be held for the accused perpetrators of human rights violations.

These efforts were seen as the appropriate response because its human rights violations towards East Timor were processed through the appropriate legal mechanism. As a result, at its 60th session in 2004, the UN Human Rights Commission decided to discontinue discussions on human rights violations in East Timor. The remaining unaddressed actions to be taken regarding East Timor were left to the Office of the Human Rights Commission and the East Timorese authorities. In this sense, Indonesia was able to disassociate itself from East Timor. As a result, East Timor became a relatively resolved case for Indonesia, and relations between the two nations have been maintained (Amnesty International and Judicial System Monitoring Program 2004).

The persistent struggle in diplomacy is also illustrated in Indonesia's candidacy for the UN Human Rights Commission Chair. This election process placed Indonesia as a strong competitor against other contending members, namely Pakistan, India, and Japan. India claimed it would also submit its candidate to oppose Pakistan's intention of nominating a candidate. While the two countries were caught in a deadlock, Japan tried to advance as an alternative candidate. However, its insertion as a candidate in the competition raised fears of more significant division among the Asian nations. In this situation of intense competition, Indonesia swiftly moved in (Wibisono 2006). In officiating this success in diplomacy, Dr. Makarim Wibisono was elected as the Chairman of the UN Human Rights Commission.

The success of Indonesia's Chairmanship of the UN Human Rights Commission was followed by further successes, having been elected as a member of the UN Human Rights Council 5 times. The moment occurred during the 2006-2007 period as a founding member. Indonesia was re-elected from 2007 to 2010, 2011-2014, and 2015-2017 before re-elected again in 2019 for the 2020-2022 period. Indonesia's success, in a broader sense, can be viewed as a trust from the international community for having advanced human rights and diplomacy during the post-Suharto era.

Indonesia's Human Rights Diplomacy in ASEAN

Another critical arena for Indonesia's human rights diplomacy in the post-Suharto era is in ASEAN. Indonesia's special attention and proactiveness in promoting human rights in ASEAN (Prasetyanto 2009) are based on solid reasons. First, ASEAN is an essential region in Indonesia's foreign policy because ASEAN countries share a deep circle of concentric circles in implementing foreign policy. Therefore, creating a stable, safe, peaceful, and conducive South-east Asian region, as well as establishing harmonious relations with its fellow Member States, is crucially important (Sheridan 2000). Second, Indonesia needs a positive image (McRae 2014) in the ASEAN region so that it can be seen as a 'role model' which will eventually become the capital for Indonesia's leadership in ASEAN going forward (Anwar 1994; Ministry of Foreign Affairs of the Republic of Indonesia 2005).

The awareness reinforces this view that Indonesia has sufficient capital to carry out human rights diplomacy in ASEAN. In comparison to other countries in other Southeast Asian regions, Indonesia in the post-Suharto era was one of the most proactive and successful in promoting democracy and human rights domestically. During the post-Suharto era, it had not only succeeded in issuing human rights law products and forming various human rights institutions but also displayed commitment by implementing international human rights standards. Indonesia has ratified, including in approaching human rights issues in the country, albeit far from compelling. Indonesia's increased respect, protection, fulfillment, and promotion of human rights domestically has become a vital asset for promoting human rights in ASEAN.

Second, human rights protection and promotion in the Southeast Asian region are at the bare minimum. Like Indonesia, most ASEAN member countries are still hampered by human rights violations. Such as discrimination against ethnic minorities in Myanmar, criminality, and corruption in Cambodia, implementation of the Internal Security Act (ISA), which oppresses the opposition, racial discrimination in Malaysia, discrimination against the Montagnards in Vietnam, and so on, on different scales and intensities (Lubis 2005; Djafar et al. 2014). Being surrounded

by other nations who share a similar history of human rights violations, it became Indonesia's interest to set higher goals in the field of human rights and international politics in general. Not to mention that Indonesia is a founding member of the Association and had a Secretariat established in its capital.

Third, human rights align with globalization and the socio-economic development in ASEAN countries. For example, the issue of women's rights, child rights, migrant workers, and others are often linked together as if to create a domino effect. If the human rights problem cannot be resolved, it will disturb political, economic, and regional security, which will also disturb national interests. Indonesia is aware that specific problems cannot be solved individually. As a solution, it must cooperate with other countries in ASEAN (De Bary 1998), which it has done more of since the era of SBY. The prioritizing of human rights as a regional agenda for Indonesia is done to protect its citizens and achieve a greater resonance in the Southeast Asian region (Azhar and Chrisbiantoro 2014; Wirajuda 2007).

Indonesia's activeness in human rights diplomacy in ASEAN is evident from its enthusiasm for encouraging the establishment a human rights body in ASEAN. Malaysia, the Philippines, Thailand, Singapore, Cambodia, Lao PDR, Vietnam, Brunei Darussalam, and Myanmar were somewhat reluctant to approve the formation of a human rights body or mechanism. Then, Indonesia was the first to propose and initiate the ASEAN Human Rights Body (AHRB) Terms of Reference (TOR), which was later endorsed as the ASEAN Intergovernmental Commission of Human Rights (AICHR). The idea of establishing this body can be traced back to 1993 at an ASEAN ministerial-level meeting in Singapore. As an initial effort to pioneer human rights in ASEAN, in 1995 a Working Group for the ASEAN Human Rights Mechanism (WGAHRM) was formed in Manila. The working group comprises Southeast Asian figures from both the government and civil society sectors and is divided into national working groups, including Indonesia, Malaysia, Thailand, Cambodia, Singapore, and the Philippines. In 2000 in Bangkok, the working group successfully submitted a draft Agreement for establishing the ASEAN Human Rights Commission to the Senior Officials. The realization was far from easy, however.

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It required persistence and time with a note to the instability of regional domestic politics countries at the time and the political nuance, which was generally far from democratic. Moreover, the region still saw widespread violations of human rights; hence attention to human rights tended to be rejected by most ASEAN Member States.

Motivated by Indonesia, between 2001-2009, the working group conducted a series of workshops on the ASEAN Human Rights Mechanism, which was attended by representatives of ASEAN member governments, National Human Rights Institutions (NHRIs), and Civil Society Organizations (CSOs). Although not an official ASEAN body, the WGAHRM, in collaboration with the governments of several ASEAN member countries, successfully provided recommendations to the Member States. As a result, in 2000 in Bangkok, the WGAHRM successfully submitted a draft Agreement on the Establishment of the ASEAN Human Rights Commission to the ASEAN senior officials. Subsequently, at the 41st ASEAN Ministerial Meeting (AMM) held on 21 July 2008 in Singapore, the Ministers agreed to form a High-Level Panel (HLP) on the ASEAN Human Rights Body. The function of the HLP was to formulate a draft TOR for establishing the body, following the aims and principles of the ASEAN Charter on the protection and promotion of human rights and other fundamental freedoms. It was also stated that the HLP must submit the draft TOR at the 14th ASEAN Foreign Ministers Meeting, which would be held on the side-lines of the 14th ASEAN Summit in December 2008.

In the negotiation process, Indonesia's efforts to prioritize the protecting function of the human rights body became a hotly debated issue (Wirajuda 2007; Ministry of Foreign Affairs of the Republic of Indonesia 2004). Like previous negotiations, the challenge in formulating the declaration was tackling internal rejections from the ASEAN Member States. The rejection of Indonesia's proposal came mainly from Singapore, Vietnam, Lao PDR, and Cambodia (Ministry of Foreign Affairs of the Republic of Indonesia 2005). They argued that the function of AHRB should be to hold a consultative status, at most. Indonesia, meanwhile, was of the view that the institution would, later on, carry broader authority and jurisdiction. This jurisdiction would extend far

beyond the boundaries of Member States in the effort to enforce human rights in the region.

Furthermore, the Indonesian Foreign Minister at the time, Hassan Wirajuda, stressed that unless there were a guarantee in a declaration of a leader, not a ministerial level, “Indonesia would not participate without receiving the assurance of an improved ASEAN mandate as reflected in both its procedure and mechanisms. Therefore, we have proposed a system of sanctions and penalties for non-compliance” (Wirajuda 2007). This proposal was supported by Thailand and the Philippines but was rejected by the CLMV. However, with persistent diplomacy, Indonesia’s efforts finally showed results with the approval of the establishment of the ASEAN Human Rights Body as stipulated in Article 14 of the ASEAN Charter and with the adoption by the ASEAN Member States in November 2007. The culmination of Indonesia’s achievements in human rights diplomacy was the agreement to establish AICHR in November 2012 in Phnom Penh, Cambodia.

For Indonesia, establishing the AICHR is a significant and encouraging achievement in regional diplomacy. The existence of the body is crucial not only for Indonesia but also for the ASEAN Member States. AICHR is an institutional embryo that functions as a forum for regional cooperation between the ASEAN Member States on human rights (Renshaw 2010). Through this institution, Indonesia would be able to accelerate its interest in heightening human rights protection for its citizens, both at home and abroad. For example, protect vulnerable migrant workers in Southeast Asian countries such as Malaysia.

Unfortunately, AICHR is still weak and plays a minimal role until today. It mainly functions as a promotional institution when initially intended to enforce the protection of human rights in the region. Furthermore, it plays a more significant role as a consultative body of ASEAN, with limited impact on implementing a standardized notion of human rights in ASEAN. AICHR has even seen critiques from the inside. For example, Hassan Wirajuda expressed that the mandate of AICHR, as stated in the TOR, was imbalanced (Wirajuda 2007). Point 4 of the AICHR TOR, on Mandates and Functions, states 14 items that constitute the mandate and func-

tion of the proposed ASEAN Human Rights Body. However, there are no specific details related to protecting human rights from those points. Such as the need to harmonize each country's laws and regulations to align with universal human rights, submit periodic reports on the protection of human rights, and encourage the ASEAN Member States to accept human rights monitoring missions from human rights institutions or bodies that already exist.

The non-interference policy and the principle of consensus are contributing factors to its difficulty. Non-interference is a tremendous restriction for investigations or gathering comprehensive information from across the Member States (Arendshorst 2009). Likewise, the ASEAN consensus has, in the past, prevented AICHR from responding quickly to issues of violations in the region as it must first obtain the approval of every ASEAN Member state before issuing an action (Jones 2014; Sharom 2013). Not to mention the fact that not all ASEAN Member States have representatives to date. The fact is a crucial indirect statement from ASEAN on human rights and its regional implementation.

However, amid sharp criticism and pessimism, several international human rights institutions have welcomed these successes. For example, as stated by representatives of the Asia Pacific Forum, as follows:

“While the institutionalization of human rights in Southeast Asia may have commenced at a slower pace than in other regions, the recent inauguration of the AICHR is an important step in the right direction. The Commission has been hailed as a historic milestone in the ASEAN community-building process, and as a vehicle for progressive social development and justice and the full realization of human dignity” (Drummond 2010).

Furthermore, Indonesia has also succeeded in encouraging the ASEAN Member States to declare their determination and commitment to resolve various human rights issues. The declaration against Trafficking in Persons, Particularly Women and Children (ASEAN Secretariat 2020) and Elimination of

Violence against Women in the ASEAN Region on 29 November 2004, in Jakarta. It also proclaimed an ASEAN Declaration on the Protection and Promotion of the Rights of Migrant Workers on 13 January 2007 (ASEAN Secretariat 2020) in Cebu, Philippines. Since then, Indonesia has continued to encourage and actively participate in making the Human Rights Commission run effectively. For example, during Indonesia's Chairmanship in 2011, Indonesia provided a reference in the guidelines of the operation of AICHR (ASEAN Secretariat 2020). That year, ASEAN institutions and mechanisms saw more excellent representation, as seen in meetings with the ASEAN Human Rights Commission for Women and Children (ACWC). It can be said that Indonesia has made tremendous and notable strides in placing human rights on an essential agenda for ASEAN. However, this success pivots on the political will of the other Member States. As a region and a united front, ASEAN has yet to achieve in numerous human rights sectors, including migrant workers, protection for women and children, education, and social security.

Conclusion

From the previous explanation, it can be concluded that Indonesia's post-Suharto era had gradually carried out human rights diplomacy in the UN and ASEAN. In contrast to the previous period, where it would tend to resort to passiveness and reactionary in responding to human rights issues, Indonesia's attitudes post-Suharto saw more depth and has been argued to be relatively progressive. Indonesia does not only carry out human rights diplomacy at the international and regional levels but also by strengthening laws and regulations as well as human rights enforcement agencies and legally processing cases of domestic human rights violations. Indonesia's human rights diplomacy is driven mainly by the interest in rebuilding its image in the international community. Through this objective, Indonesia hopes to be free from the political and economic pressures of the international community, which has accused Indonesia of being a severe violator of human rights.

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In the post-Suharto era, the human rights diplomacy carried out by Indonesia, both at the United Nations and in ASEAN, can be very successful. However, it must be admitted that many domestic human rights problems remain unresolved. Nevertheless, through human rights diplomacy, Indonesia not only succeeded in escaping the international community's pressure as a severe human rights violator but also succeeded in becoming a human rights promoter. Indonesia's role in establishing a human rights mechanism in ASEAN, the election of an Indonesian diplomat as the head of the United Nations human rights institution, and the weakening of international public pressure on Indonesia about human rights issues are some of the most important achievements that underline the success of Indonesia's human rights diplomacy.

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