

ANALYSIS OF SMALL-SCALE MINING IN MINERAL AND COAL MINING LAW NUMBER 4/2009 (INPUTS FOR FORMULATION OF IMPLEMENTING REGULATION)

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ABSTRACT

Law Number 4/2009 on Mineral and Coal Mining has been approved by the DPR (the Indonesian Parliament) and issued by the government on January 12, 2009. Explicitly, small-scale mining is regulated by the law and the upcoming governmental decree that regulates its implementation to be issued in 2010, followed by the ministerial decree and regional regulation.

In the meantime, illegal mining activities (PETI - Pertambangan Tanpa Izin) reported everywhere in Indonesia. It reminds us on the case of tremendous environmental disaster due to illegal gold mine in Central Kalimantan, unconventional tin mine in Bangka Belitung, illegal coal mine in South Kalimantan, and illegal mine of industrial mineral (C Group minerals) in all areas in Indonesia.

The current question is will those disasters happen again and can the Law Number 4/2009 prevent it from happening? Analysis on the law identifies that the law needs to be clarified with implementing regulations that, among others, regulate the small-scale's mining area, small-scale mining authorization, the right and responsibility of mining authorization holder, transfer of authority to head of district, the right of mining authorization holder over the land, etc.

Keywords: illegal mining, environmental disaster, Law Number 4/2009, and regulation of implementation

INTRODUCTION

Small-scale mining, commonly expressed as artisanal and small-scale-mining, has conceptually been disputed by mining experts; for national case can be referred to Lembaga Demografi FEUI, 1996; and DJPU – LPM ITB, 1997, and for international case, see Ghose, 1994, and Blowers, 1988. The developed concept in Indonesia refers to the model of communal participation in mining activity introduced by Wiriosudarmo (1995, 2001), and developed by Sutjipto (1995) and Sembiring (1996).

Small-scale mining in Indonesia has a strong correlation with illegal mining activities with aspects of social, economic, and culture. Since then, small-scale mining was associated to disorderly mining practice that waste mineral resource, damage

environment and endanger life. Due to the negative perception to small-scale mining, which is associated to disorderly illegal mining, the mining community in Indonesia, led by the government and the mining industry, unofficially believes that mining is not for the common people due to its complexity, high risk and its intensive capital and technology requirements (Wiriosudarmo, 2001).

Currently, illegal gold and other minerals mining massively re-emerge. Illegal gold mining at Tahilte River and Wumbubangka has given big problems to the local government of Bombana Regency, that the provincial government of Southeast Sulawesi has to interfere. Illegal gold mining also operates at Sekotong of West Lombok (West Nusa Tenggara), Topo of Nabire (Papua), Merapi mountaneous area of Banjar (South Kalimantan),

Mount Tumpang Pitu of Banyuwangi (East Java), and Pelabohan Bajo of Flores (East Nusa Tenggara). Those minings remind us of tremendous environmental disaster in Central Kalimantan due to illegal gold mining. Illegal coal mines can still be found in South Kalimantan, East Kalimantan, and Banten. Inconventional tin mine in Bangka Belitung also still exists. Moreover, the illegal mines of industrial minerals, according to the monitoring of Tekmira team for current mining issue, have still occurred in almost all over Indonesia (Yunianto 2009).

Result of observation identifies that current illegal gold mines are actually different from the inconventional tin mine in Bangka Belitung, or illegal coal mine in South Kalimantan. Illegal gold mines are conducted by local community (most of them are poor) with simple/traditional equipment; while inconventional tin mine in Babel and illegal coal mine in South Kalimantan are done by heavy equipment with huge investment and unofficial support from authorized local government.

Illegal gold mines are difficult to manage, as it attracts lots of miners from other regions like Tasikmalaya (West Java), Kalimantan, Sulawesi, Papua, etc. Besides, there is no law regulates small-scale mining in place. The intended regulation has still being discussed after the Law Number 4/2009 was officially issued on January 12, 2009 (*Lembaran Negara Republik Indonesia Tahun 2009 Nomor 4, 2009*). The regulation is very much expected not only by community as gold/miner-

als miners but also by local government at regency/town level all over Indonesia.

At the moment, the discussion on the Governmental Regulation Plan as the implementation regulation of Law Number 4/2009 has adjusted the small-scale mining, which has passed a harmonisation stage by the Ministry of Law and Human Rights. In the middle of January 2010, this plan will be legalised by the government. Some issues of interest conflict with the other ministries have been synergised. Regarding the small-scale mining, the author as the team leader of the mining current issues has cooperated with some related experts from the Indonesian Institute of Sciences (LIPI) in providing recommendation of the improvement of the small-scale mining concept in the plan. Moreover, the author is also active in the discussion as a member of the interministerial team represented the Agency for R&D of Energy and Mineral Resources.

METHODOLOGY

The methodology applies approaches to regulations by operating various knowledge parametres. Data processing and analysis is conducted as analitical descriptive, and the reconstruction of problem solving formulation is based on field findings through rational considerations by referring to the direction of national policy on small-scale mining (as shown in flow chart of Figure 1).

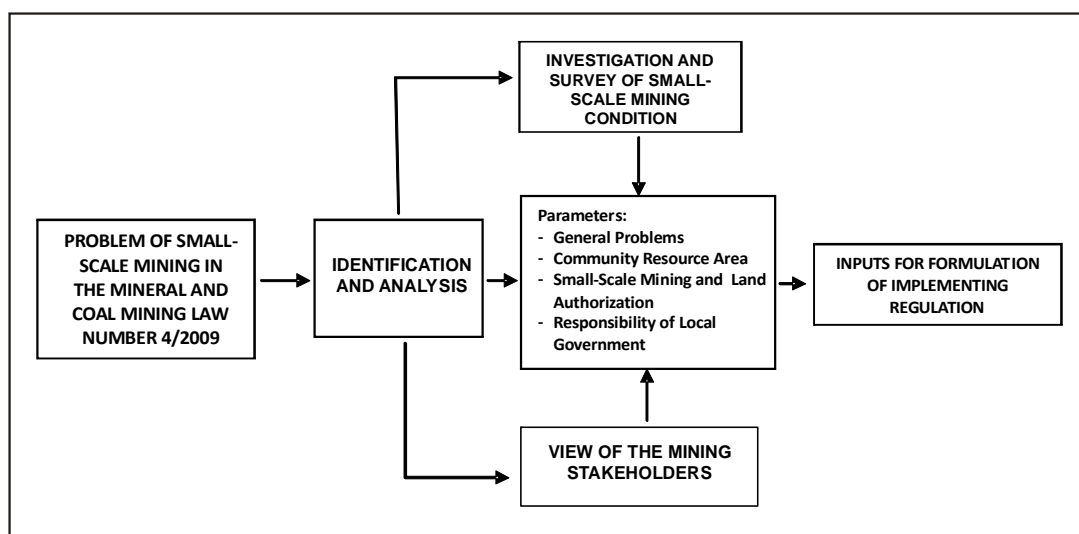


Figure 1. Analysis of small-scale mining in the Mineral and Coal Mining Law Number 4/2009

Primary and secondary data obtained by field survey and inventory of statements and opinions from mining experts. Primary data is obtained from survey of Monitoring Team of *Puslitbang Teknologi Mineral dan Batubara* during 2005-2009. While secondary data is collected through inventory and interview with related stakeholders, among others, central government and regional mining enterprises, academics, mining association, non-governmental organization (NGO), miners, and mass media.

MINERALS AND COAL MINING LAWS

After a long process, eventually Law Number 4/2009 is approved by DPR (the Indonesian Parliament) and officially issued by the Government on January 12, 2009. This law cannot in fact accommodate all interests, especially those contradictory interests. However, the law reflects the political decision at best to support interests and expectations of mining stakeholders.

In the meantime, before the implementing regulation is in place, Article 173 verse (2) becomes the reference of all regulations based on Law Number 11/1967. It is known that Law Number 11/1967 and its implementing regulations are inadequate to solve the problem of illegal gold mining and other minerals mining, especially industrial minerals. Illegal gold mining exists everywhere, tin unconventional mining operates in Bangka Belitung, and illegal coal mining is located in South Kalimantan and other areas.

As reference for authorization, the Ministry of Energy and Mineral Resource issued circulation letter through the General Director of Mineral, Coal and Geothermal No. 03E/31/DJB/2009 regulating authorization of mineral and coal mining, before the issuance of Government Decree for implementation of Law Number 4/2009, dated Januari 30, 2009. However, the regulation on mining authorization stipulates mining activities outside small-scale mining so as clearly ignores the authorization of small-scale mining.

Article 174 of the regulation describes that the implementing regulation has to be in place within a year since the law is issued. In the implementing regulation, small-scale mining will be regulated as reference for regency/town in formulating the regional regulations. Articles 26, 72, and 143 regulate the criteria and mechanism of small-scale mining area division, procedure of small-scale mining authorization, as well as guidance and monitoring of small-scale mining. Small-scale mining has implicitly regulated in Law Number 4/2009, specifically Articles 20-26 pertaining area of small-scale mining and Articles 66-73 pertaining authorization of small-scale mining.

The authority of government, province and regency/town has already been arranged in articles 6 to 8 of Law Number 4/2009. Related to the mining carried out by community, the central government has the authority to decide WP, WUP, WPN and to provide IUP for interprovince and/or marine region of more than 12 miles, and to give IUPK, etc (Article 6). The provincial authority is to cope with interregency/town and or marine region of 4-12 miles and to provide IUP, etc (Article 7); whereas the regency/town is to decide WPR, WUP and to issue IPR, IUP, etc (Article 8). All the authorities is also arranged in a clause of guidance and monitoring in accordance with Article 71 Paragraph 2 and Article 144.

Several articles have also stipulated small-scale mining in terms of local government's responsibility in managing mining activities in regions, controlling lands managed by small-scale mining authorization holders, financial support to small-scale mining, etc. Table 1 below shows matrix on articles of Law Number 4/2009 that need to be completed by implementing regulation.

The implementing regulation of small-scale mining is being formulated in the Government Decree Bill on Management of Mineral and Coal Mining, and other 3 bills to be issued at the beginning of 2010. The decrees will be the implementation and technical references for formulating ministerial regulation, ministerial decree, head of district/mayor decree, etc.

Table 1. Matrix of Articles of Law Number 4/2009 that needs to be completed with implementing regulation

Articles of Law Number 4/2009 that need to be completed with implementing regulation		
To be completed with Governmental Decree	To be completed with Ministerial Decree	To be completed with regional regulation
<p>Article 5 verse (5) (regulates verses 2,3 on national interest & production rate)</p> <p>Article 12 (regulates articles 9,10,11 on mining area)</p> <p>Article 19 (regulates article 17 on width and border of metal & coal mining authorization area)</p> <p>Article 25 (regulates articles 21,23 on small-scale mining area *)</p> <p>Article 33 (article 31,32 on width of WIUPK)</p> <p>Article 34 verse (3) (regulates verse 2 on mineral classification)</p> <p>Article 49 (regulates article 42,49 on mining authorization for exploration & for production operation)</p> <p>Article 63 (regulates articles 51,54,57,60 on mining authorization area -WIUP for metallic: mineral, non-metallic mineral, rocks, coal)</p> <p>Article 65 verse (2) (regulates verse 1 on requirement of WIUP of metallic mineral, non-metalic mineral, rocks, coal)</p> <p>Article 71 vers (2) (regulates verse 1 on technical requirements of small scale mining *)</p> <p>Article 76 verse (3) (regulates verse 1 on procedure to obtain Special Mining Authorization)</p> <p>Article 84 (regulates article 74 verse 2,3 and article 75 verse 3 on procedure to obtain WIUPK)</p> <p>Article 86 verse(2) (regulates verse 1 on technical requirement to obtain IUPK)</p> <p>Article 89 (regulates article 87 on procedure of research & investment assignment, article 88 on data processing)</p> <p>Article 101 (regulates article 99 on reclamation & post-mining, article 100 on guarantee cost for reclamation& post-mining)</p> <p>Article 103 verse (3) (regulates article 102 on added value)</p> <p>Article 109 (regulates article 108 on implementation of development and empowerment of society)</p> <p>Article 111 verse (2) (regulates verse 1 on responsibility to report for IUP&IUPK holders)</p> <p>Article 112 verse (2) (regulates verse 1 on shares divestation)</p> <p>Article 116 (regulates articles 113,114,115 on temporary stop of mining activity)</p> <p>Article 144 (regulates articles 139,140,141,142, 143 on standard & procedure of guidance and monitoring) – needs ministerial decree..</p> <p>Article 156 (regulates articles 151,152 on implementing procedure of administrative sanction)</p>	<p>Article 127 (mining service)</p>	<p><i>Article 26 (regulates articles 22,23 on criteria & mechanism of division of small-scale mining area*)</i></p> <p><i>Article 72 (provision of small-scale mining authorization*)</i></p> <p><i>Article 143 (guidance and monitoring of small-scale mining*)</i></p>

Note: *) Words in italics are for articles of small-scale mining that need regulation of implementation

ANALYSIS AND DISCUSSION

Management of Community Resource Area

In controlling the community resource area (Articles 20-21), mining activity of community is conducted within the community resource area, and that the area is decided by the head of regency/mayor after consulting the local parliament at regency/town level. The articles strongly imply mining regional autonomy at regency/town level. For managing small-scale mining, authorization should be fully on the hand of regional government, as if central government still involves in the process it will only result in bureaucratic procedure that is ineffective and does not speed up the solution of current problem of illegal gold mining.

Furthermore, for the criteria of community resource area on article 22 (letter a – f) there are at least 3 things that need to be specified by the implementing regulation and technical reference. Firstly, primary metallic mineral or coal resource is mined in maximum 25 m depth, many small-scale minings are conducted at the depth of more than 25 m. Secondly, the width of community resource area is maximum 25 ha, while small-scale mining is mostly conducted in many places moving from one place to another based on adequate resources. Thirdly, small-scale mining area has to be explored in at least 15 years, while current illegal gold mines ignore this requirement. Those three rules have to be comprehensively and rightly understood. They need detailed explanations as regulated in Article 25 pertaining guideline, procedure and authorization of community resource area that will be formulated in governmental decree. The governmental decree will further become the reference of the making of regional regulation by regency/town on criteria and mechanism of community resource area authorization.

In term of small-scale mining operation period on the area authorized as community resource area, Article 22 letter (f) has to be differentiated from Article 24 in Law Number 4/2009. Article 22 letter (f) mentions that the activity on that area has to last more than 15 years, while Article 24 does not limit the operation period, as it mentions that any activity started on the area justifies it to be prioritised as community resource area. Description of Article 24 is very much adequate to solve the current problem of illegal gold mines, before environmental disaster massively happens. On the contrary, substance of Article 22 letter (f) is im-

possible to apply, as the area has to wait for 15 years to be authorized as community resource area. Definitely by the time, the environment has been damaged and resource has been completely explored.

Several survey results of gold and coal illegal mining below can be considered. Illegal gold mining at Lanud of Bolangmongondow Regency and at Pongkor of Bogor Regency is conducted in more than 25 meters depth (DESDM, 2000). Illegal coal mining in South and East Kalimantan has also more than 25 meters pit (Yudianto, 2008). In terms of the area width, illegal gold mining at River Tahilte – Bombana (Yudianto, 2008), illegal gold mining at Mount Tumpang Pitu – Banyuwangi Regency, and illegal gold mining at Sekotong – West Lombok Regency covered more than 25 ha (Yudianto, 2009). Handling the above cases needs to be prioritized and allocated in WPR. In this case, we cannot refer to Article 22 point (f) as this article can only be applied to mining activities that has been active for 15 years. By then, the area will have been damaged and the resource has been vastly explored.

MANAGEMENT OF SMALL-SCALE MINING AUTHORIZATION AND LAND

Article 67 verses (1,2) states that small-scale mining authorization is granted by head of regency/mayor, or head of district when given authority by head of regency to do so. Types of minerals can be explored by small-scale mining (Article 66) are metallic mineral, industrial minerals, rocks and coal. The width of small-scale mining authorization, Article 68 verses (1,2) is divided into 3 classifications: by individual of 1 ha maximum, by group of 5 ha, and by cooperative of 10 ha. The length of period is 5 years and can be extended.

In giving authorization, the head of district has to also be empowered in managing mining activities. Without capacity empowerment of head of district, the same cases as current environmental disasters will happen. Mining authorization granted by head of district is mostly not based on adequate knowledge on potential environmental disaster. Condition becomes worse when the small-scale-mining (individual, group, or cooperative) explores metallic mineral or coal that, in term of type, are more potential in causing disaster to environment than non metallic mineral and rocks quarry.

The right and obligation of small-scale mining authorization holder are regulated in Article 69 and Articles 70-71. Those articles clearly do not differentiate the right and obligation of small-scale mining from other mining authorization, neither Mining Authorization (IUP) or Special Mining Authorization (IUPK). Obligations of small-scale mining authorization holder are: (a) Operate after the issuance of authorization; (b) Conform to regulations on mine safety and health, as well as environment management, and requirement fulfilment; (c) Manage environment with local government; (d) Pay regular and production cost; and (e) Submit regular report to authorization provider. Moreover, authorization holders oblige to refer to mining technical requirement of governmental decree and the procedure of authorization process in regional regulation of regency/town level. If the above obligation is consistently applied, as has been applied to Mining authorization or Special Mining Authorization holders, most applications will be declined from being granted as the applicants are people of grassroot level, poor and do not have access to resources. In relation to that, classification needs to be applied to small-scale mining base on business profile, related to issues of capital, equipment, background of activity, and business management.

Case of small-scale mining permit and for the establishment of artisanal mining zones in Democratic Republic of Congo (DRC) can be used as discussion references (ITRI, 2008). A small-scale mining permit is granted for 10 years, and artisans require a 'diggers' card authorized by the law and granted through the provincial authorities. In reality, a few of artisanal miners possess the card. Even if they recognize the legal requirement to have the card, they are unable or unwilling to pay US\$25 to obtain one. Furthermore, the card is valid for certain zone, while the miners are mobile and migrate from zone to zone. Also, the authorization is subordinate to a mining right (exploration or exploitation permit), and thus companies can take over permit areas which are actively worked by artisans (Word Bank, 2008).

Land issue in Article 138 Law Number 4/2009 is also crucial. It states that the rights on small-scale mining authorization equals to that of Mining Authorization or Special Mining Authorization; it is not authorization over the land (to own the land). But what if the small-scale mining is conducted on the holder's own land, for example on the house yard? It has to be described and accommodated in

the ministerial decree or regional regulation of regency/town level.

With appropriate regulations, small-scale mining can be the main contributor to the micro economic growth and become the crucial phase of community development or the country's revenue. The national data of illegal mining is difficult to be updated. The complete data is available based on survei conducted by the DESDM team for illegal mining management in 2000 (DESDM, 2000). Illegal mining in 2000 operated in 713 locations in 52 regency of 16 provinces, involving 67,550 workers. The estimated production of illegal mining of gold, coal, and diamond is respectively 30 tons/year, 4,337,200 tons/year, and 33,600 tons/year, expectively. The amount of money come of those 3 minerals is estimated to reach IDR 2,835 billion/year. While according to the survey team of DESDM in Bombana in 2008, more than 10,000 workers were recorded, in Tumpang Pitu-Banyuwangi in 2009 there were approximately 3,000 workers, and Sekotong-Lombok Barat involved 5,000 workers of illegal mining. Referring to the data, if the illegal mining activity can be accomodated in the regulation, more revenue will go to the government income and can contribute to the people's welfare.

RESPONSIBILITY OF LOCAL GOVERNMENT AT REGENCY/TOWN LEVEL

Mining authorization provider, in this case is local government, functions as the owner of authorization and mining manager and is expected to poses adequate knowledge of mining. It stresses once again that when the head of district has not adequate capacity on the mining issue, transfer of authority from head of regency/mayor cannot yet be done.

Transfer of authority to head of district to grant mining authorization must be regulated in the regional regulation on mining. It is specially to prevent the case of environment exploitation mainly as the source of local revenue without considering potential environmental disaster (Komite Pemantauan Pelaksanaan Otonomi Daerah, 2002). Moreover, it is in line with the function and responsibility of local government of regency/town level to ensure that small-scale mining complies to the right and legal procedure. In Article 73 verses (1-4), the task and function cover: conduct guidance on mining activity; be responsible for techni-

cal safety of small-scale mining activity; and record production report of all small-scale mining activities in the region to be reported to the minister and governor.

Based on the survey team of Tekmira, the transfer of authority to the local government at district level (as happened to cases before the issuance of Law Number 4/2009), lots of environmental disasters still can be found as the mining authorization was granted without paying attention to the potential environmental problems. Mining authorization was mostly granted solely for revenue reason. Some identified cases are limestone quarry at Citatah – West Bandung Regency (Yuniarto, 2008), sand mining at Subang and some parts of Java Island (Yuniarto, 2009). In doing so, the transfer of authority for mining approval to the district level has to be followed by the increase of capacity of district in terms of professional human resource and adequate budget.

CONCLUSION AND RECOMMENDATION

Conclusion

The regulation of small-scale mining in Law Number 4/2009 needs to be clarified in the implementing regulation as well as in the implementation and technical references, like government decree, regional regulations, ministerial regulation, ministerial decree, head of regency/mayor decree. Cases of illegal mining and small-scale mining can be used as reference for the formulation of regulation.

The authority of government, province and regency/town has already been arranged in articles 6 to 8 of Law Number 4/2009. Related to the mining carried out by community, the central government has the authority to decide WP, WUP, WPN and to provide IUP for interprovince and/or marine region of more than 12 miles, and to give IUPK, etc. (Article 6). The provincial authority is to cope with interregency/town and or marine region of 4-12 miles and to provide IUP, etc (Article 7); whereas the regency/town is to decide WPR, WUP and to issue IPR, IUP, etc (Article 8). All the authorities is also arranged in a clause of guidance and monitoring in accordance with Article 71 Paragraph 2 and Article 144.

The small-scale mining has implicitly been arranged by Law Number 4/2009 and Articles 20-26 that are about WPR; and Articles 66-73 about IPR.

The handling of illegal mining that is still operating in some regions, is able to be immediately conducted based on Article 24, which does not restrict the operating time. When the illegal mining has already operated, this must be decided as WPR.

In managing WPR (Articles 20-21), activity of the small-scale mining is conducted in a WPR that is decided by Regent/Mayor after consulted to DPRD of regency/town. The main point of these articles is to focus the regional authority for mining activity in the level of regency/town. There is no difference in the issue on right and obligation of the IPR holder with the IUP or IUPK holders, as arranged by Article 69 and Articles 70-71. This needs more technical regulation in the level of regency/town. The definition of right and duty of the IPR holder is based on the real condition of the small-scale mining operation. This policy is needed, because most of the small-scale mining are carried out by low-educated people that have no access to exploit mineral resources.

In the issue of the guidance and the monitoring for the small-scale mining, as mentioned in Article 73 Paragraphs 1-4, the regency/town government has the tight right and obligation in guiding the implementation of the small-scale mining, particularly about the exploitation and the environment. This is because the authority of the small-scale mining management as mentioned in the law is under the regency/town government.

Regulation on small-scale mining has been for a long time expected by all stakeholders, especially by the local government whose areas within the location of illegal gold and other mineral mining. Currently, nothing can be done by the local government due to the absence of regulation. The illegal miners have also high expectation on the regulation as they demand that their activity to be legal and acknowledged by the government. Thus, the regulation is crucial to be approved to accommodate all interests and to solve the problem of illegal mining in Indonesia that meets both urgent local needs and the important concerns of all stakeholders.

Recommendation

- 1) Formulation of implementing regulation on small-scale mining in reference to Law Number 4/2009 should become reference for regions to formulate regional regulation on mining.

- 2) In line with the policy on mining regional autonomy, full authorization lies on the local government at regency/town level. Central government should not interfere in the issue as it will only prolong the bureaucracy and become constrain to speed up the management process.
- 3) The authority of regency/town in relation with Article 8 Law Number 4/2009 in deciding WPR and IPR has referred to the decided WP issued by the government. This must be in a line with the regional regulation that is made based on norm, standard, criteria and procedure in the implementing regulation of Law Number 4/2009.
- 4) The illegal issue that is still operating in the regions became priority to cope with the small-scale mining according to Article 24 by allocating in WPR and IPR. As its authority, the regency/town government is compulsory to conduct guidance and monitoring to the small-scale mining more tightly, by law enforcement, particularly about the exploitation and the mining environment.
- 5) In formulating regional regulation on mining, especially on the issue of small-scale mining implementation mechanism, local government of regency/town level should refer to criteria, guideline, and decree stated by central government.
- 6) Transfer of authority on mining management to the head of district should be accompanied by strengthening the capacity to manage mining activity in the region in terms of technical, manpower, and mining finance.

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