

Legal Protection of Intellectual Property Rights for Micro, Small and Medium Enterprises (MSMEs) Products in Kendari City

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Abstract

The purpose of this research is to find out the legal protection of Intellectual Property rights for MSME products in Kendari City and the efforts of the Kendari City government in order to provide legal protection of intellectual property rights over MSMEs products. This research uses normative juridical research methods, namely legal research conducted by examining library materials or secondary data as basic materials to be researched by conducting a search of regulations and literature related to the problems studied. This research emphasizes and used the approaches such as statute approach and conceptual approach. The results showed that: 1) The legal protection of intellectual property rights to MSMEs products in Kendari City included brand protection, copyright, industrial design, trade secrets, and patents. Brand Protection is the most widely used choice by MSMEs in Kendari City to create a strategic bargaining position on a national and international scale. This is in accordance with the data of IPR registration applications in Kendari City which is dominated by registration of brand registration applications. Types of IPR protection other than brands can also be utilized by MSMEs by looking at the advantages and disadvantages of IPR protection for use in business activities carried out, and 2) Efforts of the Kendari City government to protect and empower Small and Medium Micro Enterprises in Kendari City include: a) Increasing human resources Capacity through technical guidance, b) Providing training and socialization to MSME actors regarding IPR registration procedures, c) The IPR registration fee of MSME products is cheaper, d) Give an Intensive financing to IPR registration for MSME products.

Keywords: legal protection, intellectual property rights, MSMEs

1. Introduction

In the era of globalization, Intellectual Property Rights (IPR) is a very interesting and decisive issue in accelerating development. Although it is a Private Rights, Intellectual Property Rights serves and contributes to the business world including dealing with micro small and medium enterprises (MSMEs). Intellectual Property Rights is an important thing to be implemented in Indonesia today. This is based on the reason that Indonesia has great potential in the field of MSME business so it needs to be supported by optimal efforts in providing IPR protection. Currently in Indonesia the development of MSMEs is quite rapid and able to contribute to national economic growth.¹ MSMEs have enormous potential and role in sustaining the nation's economy to date. The MSME sector acts as an economic safety net and social safety net that absorbs a lot of labor, reduces poverty, reduces unemployment and contributes to the increase in Gross Domestic Product (GDP).

The protection of IPR law in developing countries such as Indonesia has not been a serious concern, this is based on the low number of applications for IPR and the rampant violations of the law against IPR. Another factor is the behavior of Indonesian MSME Business is still very traditional, and has not thought about protecting IPR over its products or product design. Economic factors in IPR also affect, because it cannot be obtained instantly as well as business activities in general. In addition, the low understanding of IPR is also influenced by the development of industry, technology and economy of a country.² Other obstacles, due to accessibility to register intellectual property is not easy, coordination in the implementation between government agencies has not been arranged and

¹ Dyah Permata Budi Asri, "Protection of Intellectual Property Rights Law for Creative Products of Small and Medium Enterprises in Yogyakarta" *Journal of Law Ius Quia Iustum*, Vol. 27 No.1 January 2020 Issue, 130-150, DOI: 10.20885/iustum.vol27.iss1.art7

² Sanjaya Lall, "Indicators of the Relative Importance of IPRs in Developing Countries", *Research Policy* 32 (2003) 1657-1680, 2003.

there is a long bureaucracy and costs. The lack of socialization of IPR for every product produced by MSMEs is also very minimal so that business actors do not know IPR at all. This situation is certainly alarming because in the business world there is always competition. Unhealthy competition will make business people experience defeat in terms of product discovery and marketing.

The effects of IPR growth in this context vary, depending on time and in different regions of the world.³ A good or service produced today in a country can be presented in another country on a relatively short period of opportunity. The presence of goods and services in the production process that has used IPR⁴, therefore the importance of legal protection for MSME products by based on IPR.

In Kendari City the number of MSMEs continues to increase. The latest data in 2017 there were about 11,837 MSMEs spread across the Kendari City area. In 2018 the number of MSMEs was recorded at 13,446⁵, in 2019 there was an increase of about 14% as many as 15,348 MSMEs and in 2020 the number of MSMEs in Kendari City amounted to 41,985 MSMEs.⁶ This is a positive trend for the development of the MSME sector in Kendari City because it has increased from the previous year. In Kendari City has a large micro and small business potential because Kendari City is the capital of southeast Sulawesi province and has cultural tourism assets that encourage business actors to build and develop their businesses.

Currently the policy for MSMEs in Indonesia is marked by the birth of Law No. 20 of 2008 on Micro, Small and Medium Enterprises. The purpose of the birth of the UMKM Shrimp Law is to improve the ability and institutional role of MSMEs in the national economy. In Article 7 of the MSME Law states that the Government and Local Government are given the authority to make policies in growing the business climate, including funding, facilities and infrastructure, business information, partnerships, business licensing, business opportunities, promotion and institutional.

The Government and Local Government in the MSME Law are also mandated to facilitate the ownership of intellectual property rights to micro, small, and medium enterprises in domestic business activities and exports and encourage Micro, Small, and Medium Enterprises to obtain certificates of intellectual property rights and encourage Micro, Small, and Medium Enterprises to obtain certificates of intellectual property rights.⁷

Intellectual property rights are the result of the process of human thinking ability incarnated into a creation or invention. Those creation or discovery belongs to a man, and on of it attached a right who derived from the human mind. These rights are used or utilized by humans to improve the well-being or happiness of life. The more advanced and higher the level of thinking ability of a person or a nation, the more advanced and higher the science and technology it mastered. As a result, the more productive a person or nation to produces a new creation or invention.⁸

As it is known that the protection of IPR has an important meaning for the business world. The business world needs protection of its products and anything related to their products⁹. With IPR it will protect the business activities of MSMEs and also prevent the occurrence of violations of IPR products over MSMEs because it has a very important role in national economic development and create job boards for the community¹⁰. Based on the description, the problem is how the protection of Intellectual Property rights law on MSME products in Kendari City and what is the efforts of the Kendari City Government in order to provide legal protection of Intellectual Property Rights on MSME products.

³ World Bank, "Intellectual property: Balancing Incentives with Competitive Access. In: Global Economic Prospects". World Bank, Washington, DC, 2001, pp. 129–150, hlm. 135

⁴ Hendra Tanu Atmadja, "Urgency of Protecting Intellectual Property Rights in the Era of Free Trade", *Journal lex Jurnalica* Volume 12 Number 3, December 2015, pp. 196

⁵ Arlita Aristianingsih Jufra, "Study of Recovery and Development of Creative Economy of Culinary Sub-Sector Post-Pandemic (Covid-19) In Supporting Economic Growth in Southeast Sulawesi Province" *Mega Assets: Journal of Economics and Management*, Volume 9, Number 2, August 2020, 116-131

⁶ Data obtained from the Ministry of Trade, Cooperatives and SMEs of Kendari City in 2020

⁷ Article 14 paragraph (1) letter d and Article 20 letter e of Law No. 20 of 2008 concerning Micro, Small and Medium Enterprises.

⁸ Abdulkadir Muhammad, *Study of Intellectual Property Rights Economic Law*, PT. Citra Aditya Bakti, Bandung, 2001, p. 9.

⁹ Sigit Nugroho, "Protection of Intellectual Property Rights in Efforts to Improve Economic Development in the Asean Free Market Era", *Journal of Law Research of The Rule of Law*, Vol. 24, No. 2, August 2015, p. 166

¹⁰ Candra Purnama, "Protection of SME Product Law through IPR (Intellectual Property Rights)", *Dinkop UKM Central Java Province*, <http://dinkop-UKM.jatengprov.go.id/assets/upload/files/HAK%20MEREK%20UKM.pdf>

2. Method

This research method uses normative juridical research methods, namely legal research conducted by examining library materials or secondary data as basic materials to be researched by conducting a search of regulations and literature related to the problems studied. This research used statute approach and conceptual approach to the protection of Intellectual Property rights law on MSME products in Kendari City. The analysis of legal materials used in this study is qualitative descriptive i.e. analyzes by describing symptoms or phenomena and facts that can be from the field objectively to answer the problems in this study.

3. Results

3.1 Legal Protection of Intellectual Property Rights on MSME Products in Kendari City

With the protection of IPR over MSME products can provide benefits as:¹¹

- a. The company's assets because with IPR, business actors get economic benefits by means of transfer or license to increase the company's capital.
- b. Supporting business development, with the existence of IPR that has been trusted by the community, business development can be done in increasing the amount of production and the formation of new products.
- c. Legal protection and Prevent unfair business competition and increase competitiveness, with the existence of IPR it can provide legal protection to business actors who obtain IPR for their products and prevent unfair business competition due to the prohibition for business competitors to produce the same goods / services so as to increase competitiveness in reaching a larger market.
- d. Drive innovation and creativity, with the existence of IPR it will encourage business actors to develop their creativity through their intellectual ability and encouraged to always innovate.
- e. Image Building, with the IPR, products that have been protected with IPR will be easily known to the public and form an image of the product.

Considering MSMEs as the strategic field in the national economy, IPR protection must be able to be utilized optimally by MSMEs, because without realizing it, products produced by MSMEs in Indonesia are of high economic value and have uniqueness, especially when they have entered the trade market. This can also giving the interest to the parties who do not have good faith to imitate the product which is then registered by the party who imitates and in the end the MSME can no longer use the product that has been registered by the party who imitated it.

The MSME sector becomes a potential source of income for the region. This is what happened also in Kendari city which has a large number of MSMEs, namely in 2020 there are 41,985 MSMEs and 90% of them are micro-scale businesses. The continuous increase in the number of MSME units every year proves that the business climate in Kendari City is suitable for the development of MSMEs themselves. Details are presented in the following table:¹²

NO	DISTRICT	BUSINNES			SUM
		MIKRO	SMALL	MEDIUM	
1	2	3	4	5	6
1	Mandongga	6.428	254	15	6.697
2	Kendari Barat	5.821	84	16	5.921
3	Kadia	4.837	258	22	5.117
4	Kambu	3.690	77	3	3.770
5	Poasia	3.573	89	4	3.666
6	Wua-Wua	3.513	105	9	3.627
7	Kendari	3.491	31		3.522
8	Abeli/Nambo	3.224	49	3	3.276
9	Baruga	3.210	103	7	3.320
10	Puuwatu	3.001	63	5	3.069
	SUM	40.788	1.113	84	41.985

¹¹ Directorate General of Intellectual Property Rights - Ministry of Justice and Human Rights, *Building Small and Medium Enterprises Based on Utilization of Intellectual Property Rights System (Tips to Protect Business)*, (Jakarta: DJHKIAPEC-IPAustralia, 2004), p. 13-14.

¹² Data from the Office of Cooperative Trade and SMEs of Kendari City 2021

The fact that the market potential of MSMEs at home and abroad is very large and has a tendency to continue to grow. This further strengthens the reason for the importance of protecting intellectual property rights (IPR) over MSME products with the aim that the originator of creative ideas and innovations get economic benefits for their intellectual work. Service to the application of IPR for MSMEs has been done for a long time. In some IPR such as Brands, Patents, Industrial Design, Geographical Indications, registration applications are an absolute requirement of IPR protection. Although some other IPR such as Copyright and Trade Secrets legal protection system through declarative principles. Currently, the submission of Brand registration for MSMEs still dominates. According to Article 3 of Law No. 20 of 2016 on Brands and Geographical Indications it is determined that protection of brands is granted after registration. So that brand registration is important in the framework of brand protection.

In 2021, data obtained by MSMEs of Kendari City who have obtained IPR amounted to 18 MSMEs of which all types of IPR are brands. The full details will be presented in the following table:

NO.	NAME OF THE OWNER	TYPE OF BUSINESS	TYPE IPR	LABEL NAME
1.	Lilis Ayu Rimbawati	onion sticks, chips & pastries	Trademark	Lar.co
2.	Ady Rachmat Saleh Maddapy	Skewers, ToothPicks	Trademark	Gambar Kelinci (Kelinci)
3.	Sahimi Muh. Saifulloh	Bread, Pastries, Wet Cakes	Trademark	Mekar Sari
4.	Annisa	Tent Rental, Glassware Rental	Trademark	Rezky
5.	Titin	Cheese sticks, Pastries	Trademark	Makmur Sejahtera
6.	Armawati	Banana Chips, Mete Coat, Brown Coat Road	Trademark	Arma Jaya
7.	Andi Musfita	Bagea Cake, Baruasa Cake	Trademark	Mustika Nur
8.	Nur Rasyid	Wasp Bread, Sweet Bread	Trademark	CJDW
9.	Harmawati Hasani	Snacks (Disco Beans)	Trademark	Usaha Mandiri
10.	Sutri Burhanuddin	Abon Fish, Abon Beef, Chicken Abon	Trademark	Rezkifood
11.	Hunung	Kue Bagea, Baruasa, Kerupuk Bombay, Kue Kering	Trademark	Mega Rizky
12.	Nurwati	Chocolate, Baruasa, Cake	Trademark	FAFA NUFA
13.	Dimas Ari Nuryanto	Shoes, Belts, Sandals	Trademark	Danrep
14.	Nyoman Darniati	Peanut Rempeyek	Trademark	Balmas
15.	Rita Ismayanti, SH.	Souvenir Shop	Trademark	Kinole 2 'A
16.	Damaris Lumele	Furniture Craftsmen	Trademark	Meubel @Las
17.	Samsudi	Pastries, Wet Cakes	Trademark	TAT

While the products of MSMEs of Kendari City are applying for IPR as many as 10 MSMEs. The full details will be presented in the following table:¹³

¹³ Data from the Office of Cooperative Trade and SMEs of Kendari City 2021

NO.	NAME OF THE OWNER	TYPE OF BUSINESS	TYPE IPR	LABEL NAME
1	La Ato, ST	Cashew Processing Trade (Cashew Processing)	Trademark	Coklat Kambaka
2	Muhammad Irsan	Other Beverage Industries	Trademark	Limuni
3	Siti Rahma Nuraminah	Bread and Cake Products Industry	Trademark	Nina Cake
4	Ahmad Hasta Fariza	-	Trademark	Ardun
5	Sri Yusnaningsih	Cake and Chocolate Trade and Cave Kembang, Cocoa Industry	Trademark	To Lucky Deela
6	Sumarlin	Latoma Honey	Trademark	Madu Latoma
7	Ady Yanto Saputra	Fisheries Processing	Trademark	CV. Ayyasih mandiri
8	Rieska amalia A. Rahman, S.IP.	Thai Tea and Food	Trademark	Momina
9	Fitrah Yuliani Sabara, S.Kom.	Batik	Trademark	Bohama
10	Sakaria	Internet Service Provider	Trademark	PT. Sarana Cipta Komunikasi

For MSME products can be given intellectual property rights protection (IPR) in the form of:

- 1) Copyright Protection of Creative Works of creators in Science and Works of Art;
- 2) Trademarking or Service Marks for Images, Names, Words, Letters, Numbers, Color Arrangements or Combinations of these Elements that have differentiating power and are used in the trading activities of goods or services;
- 3) Granting a Simple Patent on the technology found in the form of a new product or tool and has practical usefulness value due to its Shape, Configuration, Construction, or Components;
- 4) Creation of industrial design in the form of configuration, line composition or color that gives an aesthetic impression and can be applied to industrial commodities and handicrafts;
- 5) Trade Secrets on information that is not publicly known in the field of technology and or business, of economic value, useful in business activities and kept confidential by the owner of trade secrets;

By giving and applied of intellectual property to small and medium-sized micro-businesses, it can certainly create a better and healthier atmosphere for the growth and development of creative passions in the fields of science, art and literature (can prevent unhealthy business competition / unfair competition) and can minimize the business deviations or violations committed by irresponsible people.

In addition, the application of intellectual wealth to small and medium-sized micro-businesses as an effort in businesses that lead to prosperity is based on intellectual property principles, namely the principles of justice, economy, culture, and social.

3.2 Efforts to Legal Protection for Intellectual Property Rights for MSMEs Products in Kendari City

The Indonesian government appears serious in encouraging the business sector to adapt to the Era of Industry 4.0 which is dominated by connectivity. The internet is something that cannot be separated from this era. IPR services for MSMEs should also take advantage of internet connectivity to make it easier to access MSMEs and not limit the area and time, in the sense of being able to access anywhere and anytime. It is necessary to build a system so that MSMEs can easily and immediately access the application for IPR registration by not reducing business activities carried out in different places. The IPR service facility is based on a website or online system. Besides being useful to facilitate access to IPR registration for MSMEs, IPR registration through online system will also be an easy and accurate means of storing MSME data. This is the case with the registration of MSME IPR in Kendari City. However, in addition to the ease or advantages of the online IPR registration application process

there are obstacles faced by MSME actors of Kendari City to the IPR registration process, among others:¹⁴

- a. There is still low awareness of MSME actors to register their products because they do not know the benefits of brand registration. With the registration of the brand, with its power will provide legal protection to the brand owner so that MSMEs have a fixed legal basis in protecting the brand of their products.
- b. Limited information about the procedural registration of intellectual property rights for MSMEs
- c. The MSME feels that registering its product brand will incur a very large cost where the average MSME is a medium to lower business.
- d. The length of time required in the event of brand registration
- e. Some MSMEs do not know the institution that is authorized to handle the registration of IPR.

From the results of observations and research with MSME actors in Kendari City, there are still many MSME actors who do not want to register MSME products with IPR, as for some factors that cause MSMEs not to register their MSME products with HKI as outlined by Selvie Sinaga, namely:¹⁵

1. Long and complex registration procedure

With regard to long and complex registration procedures, although some regulations in the field of Intellectual Property today have cut the timeframe, as is the case in Brand registration. In practice the registration process until the issuance of the certificate is relatively longer than the specified time. In the practice of IPR registration until the issuance of certificates takes a long time and not necessarily the registration application is granted so that not all MSME actors can register their products with IPR

2. Registration fee/ The registration fee is expensive

The existence of IPR registration fee waivers based on Government Regulation No. 45 of 2016 on Changes to Government Regulation No. 45 of 2014 on Types and Rates on Types of Non-Tax State Revenues and incentives. But it has not been able to reach all MSME actors in Indonesia including in Kendari City.

3. Law enforcement against IPR violations is still weak

Law enforcement for IPR violations is a complaint so that MSME actors who are violated by IPR for their products do not report to law enforcement, it will not be processed. In addition, MSME actors also do not understand the mechanism of complaints for violations of IPR in the law in the field of IPR.

Based on the description above, it takes efforts from the government, especially the Kendari City Government to give birth to policies that support the development of MSMEs in the field of IPR through IPR registration so as to obtain legal protection and certainty. As an effort to protect the legal protection of IPR over MSME Products in Kendari City. They have to increasing the MSME industry who want to register IPR by MSME actors because MSMEs will only get legal protection of IPR if they have registered their MSME products. The efforts that can be done are by:¹⁶

- a. The IPR Registration Fee that more cheap for MSME Products

The small enrollment of IPR on MSME products does not make the government stay silent. The government through the Director General of intellectual property continues to encourage to increase IPR registration of MSME products by charging a much cheaper fee compared to non-MSME IPR applicants. This shows the government's concern to improve the business development of MSMEs by maintaining the intellectual property of MSME business people. Director General of KI provides special treatment for MSME actors in supporting the MSME industry to register IPR by providing a difference in registration prices that are cheaper compared to general business actors. The following is presented a comparison of the price of registration of IPR registration application between MSMEs and non MSMEs:¹⁷

¹⁴ The results of an interview with Syahrin Mubarak as An Analyst of Intellectual Property Registration Application of The Ministry of Finance of Southeast Sulawesi

¹⁵ V. Selvie Sinaga, "Factors Causing Low Use of Intellectual Property Rights among Small Businesses To Prevent Batik", *Journal of Law Ius Quia Iustum*, Volume 21, Number 1 (2014):71.

¹⁶ Andrew Betlehn and Prisca Oktaviani Samsosir, "Legal Protection Efforts Against Indonesian Msme Industry Brands" *Journal of Law and Justice*, Vol. 3 No. 1 April (2018), p. 3-11

¹⁷ List of IPR registration fees based on Government Regulation No. 45 of 2016 on The Second Amendment to Government Regulation No. 45 of 2014 on Types and Rates of Non-Tax State Revenue Types Applicable to the Ministry of Law and Human Rights

No.	Type of IPR Per Request	How to Register	Application Fee Per Registration	
			MSMEs	Non MSMEs
1	Copyright	Electronically (Online)	Rp. 200.000	Rp. 400.000
		Non-electronic (manual)	Rp. 250.000	Rp. 500.000
2	Brand Rights	Electronically (Online)	Rp. 500.000	Rp. 1.800.000
		Non-electronic (manual)	Rp. 600.000	Rp. 2.000.000
3	Geographical Indications	Electronically (Online)	Rp. 450.000	Rp. 450.000
		Non-electronic (manual)	Rp. 500.000	Rp. 500.000
4	Patents	Electronically (Online)	Rp. 350.000	Rp. 1.250.000
		Non-electronic (manual)	Rp. 450.000	Rp. 1.500.000
5	Simple Patent	Electronically (Online)	Rp. 200.000	Rp. 800.000
		Non-electronic (manual)	Rp. 250.000	Rp. 1.250.000
6	Industrial Design	Electronically (Online)		
		1. One industrial design	Rp. 250.000	Rp. 800.000
		2. One design unit	Rp. 550.000	Rp. 1.250.000
		Non-electronic (manual)		
		1. One industrial design	Rp. 300.000	Rp. 1.000.000
		2. One design unit	Rp. 600.000	Rp. 1.500.000
7	Layout Design of Integrated Circuit		Rp. 100.000	Rp. 200.000

- b. Cooperation between the Directorate General of Intellectual Property of the Ministry of Law and Human Rights and the Ministry of Cooperatives and MSMEs

Efforts that have been made to provide IPR protection for MSME products are held in cooperation between the Ministry of Law and Human Rights of the Republic of Indonesia with the Ministry of Cooperatives and Small and Medium Enterprises of the Republic of Indonesia Number M-10-UM.06.07.TH 2006 on Improving Understanding and Utilization of Intellectual Property Rights System in which there is trademark protection for Cooperatives and MSMEs. The purpose of cooperation between the Ministry of Law and Human Rights of the Republic of Indonesia and the Ministry of Cooperatives and Small and Medium Enterprises is:

- 1) Increase knowledge and understanding and utilization of the IPR system among MSMEs.
- 2) Realizing IPR-oriented MSMEs has high quality and competitiveness in global competition.
- 3) Promote synergistic and productive coordination and cooperation between the parties in developing MSMEs and empowering the national Intellectual Property Rights (IPR) system.

- c. Provide Intensive of IPR Registration Financing for MSME Products

The legal basis of the Decree of the Director General of Intellectual Property Rights of the Ministry of Law and Human Rights of the Republic of Indonesia Number IPR-09. OT.03.01 of 2013 on Intellectual Property Rights Incentives for College High Schools, Micro-Businesses and Small Businesses and Correctional Residents in 2013. The provision of incentives in the form of financing the registration of applications for Intellectual Property Rights.

- d. Brand Registration of MSME Industry in Collective way

In Indonesia, collective brands are regulated in Articles 46 to Article 51 of Law No. 20 of 2016 on Trademark and Geographical Indications. A collective brand is a brand used in goods and/or services with similar characteristics regarding the nature, general characteristics, and quality of goods or services and their supervision that will be traded by several persons or legal entities together to distinguish with other similar goods and/or services. The purpose of using a collective brand is to simplify the completion of registration requests. For example, if ten entrepreneurs each produce a type of goods or services, then they must submit a

registration request to protect each item or service in question. Although each of the goods or services produced and traded has the same characteristics, in that case it is possible to use only one brand. Against all types of goods or services, simply one brand registration request is submitted for them to use collectively. Thus, entrepreneurs, especially MSMEs, can save costs, time and effort to process brand registration requests. The collective brand is one of the ways out given by the government to MSME businesses in Indonesia. If referring to the sound of article 1 number 4, then in principle the collective brand is a brand used by the community of business people who trade a product of the same goods or services. Business people do not need to register or build brands individually but are built together through several people or several business entities.

4. Conclusions

The legal protection of intellectual property rights to MSME products in Kendari City includes brand protection, copyright, industrial design, trade secrets, and patents, however, brand protection is the most widely used option by MSMEs in Kendari City to create a strategic bargaining position on a national and international scale. This is in accordance with the data of IPR registration application in Kendari City which is dominated by registration of brand registration applications, and 2) Efforts of the Kendari City government to protect and empower Small and Medium Micro Enterprises in Kendari City include: a) Increasing human resources Capacity through technical guidance, b) Providing training and socialization to MSMEs regarding IPR registration procedures, c) The IPR registration fee of MSME products is cheaper, d) Give an Intensive financing to IPR registration for MSME products.

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