



Optimizing PKPU in The Reconstruction of Debt Restructuring Mechanisms Based on Preventive Principles Against Liquidation in Bankruptcy Law

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Abstract

The development of modern bankruptcy law has led to a paradigm shift from a liquidation approach to debt restructuring oriented toward business sustainability. The Suspension of Debt Payment Obligations (*Penundaan Kewajiban Pembayaran Utang*/PKPU) in the Indonesian legal system is designed as a mechanism that provides negotiation space for debtors and creditors to achieve peace through restructuring. Implementation practices demonstrate a mismatch between normative objectives and empirical reality, in which PKPU often ends in bankruptcy; thus, its preventive function has not been optimally implemented. This study aims to analyze the normative construction of PKPU, identify implementation problems that cause distortion of the restructuring function, and formulate a reconstruction model based on preventive principles. The research method used is normative legal research with a statutory, conceptual, and comparative approach. The analysis is conducted on Law Number 37 of 2004 concerning Bankruptcy and PKPU, modern bankruptcy legal doctrine, and preventive restructuring practices in other legal systems. The results of the study indicate a liquidation bias influenced by procedural design, the dominance of creditor interests in the voting mechanism, limited time for restructuring, and the absence of an adequate business feasibility assessment mechanism. Reconstruction is necessary through strengthening the preventive paradigm, reformulating the application threshold, implementing viability assessments, and balancing voting mechanisms to increase the chances of successful restructuring. Optimizing the PKPU is expected to strengthen the business rescue function, maintain going-concern value, and create a balance between economic efficiency and substantive justice within the Indonesian bankruptcy legal system.

INTRODUCTION

The development of global bankruptcy law has experienced a significant paradigm shift, moving from a liquidation-based approach to a restructuring approach (Ababil, 2025). Traditional bankruptcy systems position liquidation as the primary solution to debt default, thus focusing more on asset disposal for the benefit of creditors (Latri, 2025). This model is gradually being deemed less responsive to modern economic dynamics, which emphasize

business sustainability and market stability (Awan & Sroufe, 2022; Kaftan et al., 2023). Countries with advanced insolvency systems are beginning to adopt approaches that provide room for corporate rescue through debt restructuring (Indrakusuma, 2025). This shift stems from the understanding that a company's economic value is not always reflected in its liquidated assets, but also in its potential for continued business continuity (Wijaya, 2025).

The PKPU (Penundaan Kewajiban Pembayaran Utang/PKPU) mechanism in Indonesian bankruptcy law holds a strategic position because it is designed to provide debtors and creditors with the opportunity to reach a restructuring agreement (Masruroh, 2025). The initial objective of establishing this mechanism was to rescue businesses and create more flexible negotiation space. The PKPU regulation attempts to balance the interests of creditors, who require certainty of payment, with those of debtors, who require time to improve their financial condition (Sya'ban, 2024). The existence of PKPU aligns with international trends prioritizing reorganization as an alternative to liquidation (Prayugo, 2026). This function makes PKPU not only a procedural instrument but also a mechanism for economic legal policy.

Practical reality demonstrates a normative paradox between the PKPU's ideal goals and the outcomes often encountered in practice. Many PKPU cases ultimately result in bankruptcy declarations after the restructuring process fails to reach an agreement (Raharja, 2023). This situation raises questions about the effectiveness of existing procedural designs and whether the available mechanisms truly support restructuring. Negotiations sometimes take place under tight time pressure, limiting the space for deliberation. This situation has sparked criticism that PKPU has the potential to become a preliminary step toward liquidation rather than a means of business rescue.

The dominance of the creditor-driven enforcement paradigm also influences the direction of bankruptcy law practice. Voting systems and decision-making structures often give majority creditors a strong bargaining position. This situation can create a dynamic in which long-term restructuring interests are overridden by the preference for a quick resolution through liquidation (Hermawan, 2026). Judicial practices also often prioritize payment certainty over the debtor's business sustainability. This orientation reinforces the perception that bankruptcy law still focuses predominantly on creditor protection (Sutjahjo, 2025).

The urgency of optimizing the PKPU emerged in response to these challenges. Optimization relates not only to technical procedural changes but also to a broader reorientation of the bankruptcy law paradigm. PKPU can be directed as a preventive mechanism, providing an opportunity for restructuring before financial conditions reach a critical point (Dirgantara, 2025). A preventive approach helps maintain a company's economic value while mitigating the social impact of mass liquidations. This idea aligns with international regulatory trends encouraging early restructuring frameworks.

Failed restructuring has significant economic implications. Company liquidation often has a ripple effect on workers, suppliers, and the associated business ecosystem. The value of assets disposed of through liquidation is often lower than the value of a business operating normally (Komalasari, 2023). Substantive justice is a crucial issue because overly formalistic legal decisions can ignore broader social and economic impacts (Albab, 2025). The success of a bankruptcy mechanism is assessed not only by debt resolution but also by the sustainability of the economic value maintained.

The theoretical framework of modern bankruptcy law provides a conceptual basis for

understanding this shift in orientation. Contemporary theories view insolvency law as a complex economic risk management instrument. The function of law is no longer simply to uphold creditors' rights but also to regulate the fair and efficient distribution of losses. This perspective positions restructuring as an integral part of a bankruptcy system that adapts to market dynamics. This modern approach opens up space for the reconstruction of legal mechanisms to be more responsive to economic needs.

The concepts of rescue culture and liquidation culture are often used to explain the differences in approaches between bankruptcy legal systems. Rescue culture emphasizes corporate rescue efforts through restructuring and reorganization (Sitompul, 2021), while liquidation culture tends to prioritize asset liquidation as the primary solution (Stevanio, 2021). These different paradigms influence procedural design, the role of the courts, and the bargaining position of the parties. Countries adopting a rescue culture approach typically provide more flexible instruments for debtors to improve their financial condition. A comparison of these two approaches is relevant to understanding the position of PKPU in the Indonesian legal system.

Substantive justice and economic efficiency are two principles frequently intertwined in modern bankruptcy legal discourse. Substantive justice emphasizes balancing the interests of the parties and protecting broader economic values (Merdiani, 2025). Economic efficiency directs the legal system to minimize collective losses resulting from financial failure (Sugianto, 2014). The interaction between these two principles creates the need for a restructuring mechanism that is not only swift but also fair. This approach helps avoid overly formalistic decisions without considering long-term impacts.

Legal theory as a means of social engineering provides an additional perspective on the role of PKPU in shaping economic behavior (Triana, 2024). Law not only reflects social reality but also serves as a tool to direct change toward more ideal conditions (Makruf, 2025). PKPU regulations can be understood as the state's effort to create a more resilient business ecosystem against financial crises (Mantili, 2021). Reconstructing legal mechanisms is part of the process of updating the system to align with the needs of the modern economy. This theoretical framework provides a conceptual foundation for research on optimizing PKPU as an effective and preventive-oriented restructuring mechanism.

The research gap addressed by this study lies in the absence of a comprehensive analysis of PKPU optimization based on preventive principles against liquidation. While previous studies have examined specific aspects of PKPU implementation, none have systematically analyzed the normative construction, implementation problems, and reconstruction model of PKPU as a preventive restructuring mechanism. This research addresses this gap by examining the regulatory structure of PKPU, identifying factors causing distortion of the restructuring function, and formulating a reconstruction model based on preventive principles. The novelty of this research lies in its integrated approach to analyzing PKPU optimization through the lens of preventive restructuring paradigms, incorporating comparative analysis with international best practices such as the EU Preventive Restructuring Directive and Chapter 11 of the US Bankruptcy Code. The research aims to analyze the normative construction of PKPU, identify implementation problems that cause distortion of the restructuring function, and formulate a reconstruction model based on preventive principles. The research contributes to the development of bankruptcy law theory, provides practical recommendations for legal reform,

and offers a framework for optimizing PKPU as an effective preventive mechanism in the Indonesian bankruptcy legal system.

METHOD

This study employs normative legal research methods with conceptual, statutory, and comparative approaches to analyze the optimization of PKPU (Debt Suspension) as a preventive-based debt restructuring mechanism. The statutory and regulatory approach focuses on the study of Law Number 37 of 2004 concerning Bankruptcy and PKPU, along with related regulations relevant to restructuring and bankruptcy practices in Indonesia. The conceptual approach is used to examine the development of modern bankruptcy legal theory, including rescue culture, preventive restructuring, and the concept of preservation of going concern value as the basis for normative reconstruction. Comparative analysis is conducted through studies of preventive restructuring models in several jurisdictions with developed insolvency law systems, to identify best practices that can be adapted contextually. Data analysis techniques are conducted qualitatively through systematic and argumentative interpretation of legal norms, doctrines, and judicial practices, resulting in a prescriptive construction of thought and offering recommendations for the reconstruction of the PKPU procedural design to be more effective as a preventive mechanism in the Indonesian bankruptcy legal system.

RESULTS AND DISCUSSION

Normative Construction of the Suspension of Debt Payment Obligations (PKPU) in the Bankruptcy Legal System

The establishment of the Suspension of Debt Payment Obligations (PKPU) is inseparable from the legal need to provide a more flexible restructuring mechanism than liquidation-oriented bankruptcy procedures. Law Number 37 of 2004 concerning Bankruptcy and PKPU designates the PKPU as a formal negotiation space between debtors and creditors to achieve amicable settlement through a debt repayment plan. The philosophy underlying the PKPU rests on efforts to maintain the continuity of businesses that still have economic prospects, thereby maintaining the going concern value. This approach aligns with developments in modern bankruptcy law, which recognizes the importance of business reorganization as an alternative debt resolution. These regulations seek to avoid collective losses that often arise when liquidation is carried out too quickly without prior restructuring efforts.

Comparing the objectives of the PKPU and bankruptcy is crucial for understanding the rationale for its establishment. Bankruptcy, as stipulated in Article 2 paragraph (1) of Law Number 37 of 2004, focuses on the settlement of the debtor's assets through general seizure and distribution of the proceeds to creditors. The PKPU has a different orientation, as it is directed at achieving peace through debt restructuring, as reflected in Article 222, which regulates the right of a debtor or creditor to submit a PKPU application when the debtor estimates they will be unable to continue paying their maturing debts. This difference in objectives creates a dual function in the Indonesian bankruptcy regime: a liquidation function and a rehabilitation function. The PKPU serves as a bridge between the two, with the hope that restructuring can be done before liquidation becomes a last resort.

The PKPU procedural structure is built through relatively systematic stages to ensure a balance between the interests of the debtor and creditors. The process begins with the

submission of a PKPU application to the commercial court, which is then assessed for its completeness and legal basis by a panel of judges. Article 225 of Law Number 37 of 2004 stipulates a time limit for the court to decide on a temporary PKPU application, which aims to provide temporary protection to debtors from individual execution. Once the temporary PKPU is granted, the next stage focuses on developing a composition plan, which forms the core of the restructuring process. This mechanism is designed to provide the parties with space to engage in dialogue and formulate the most rational solution.

The roles of the supervising judge, administrator, and creditors are central to ensuring the PKPU process runs according to its normative objectives. The supervising judge is tasked with overseeing the process and maintaining a balance between the interests of the parties to prevent abuse of authority. The administrator has administrative and operational responsibilities, including assisting debtors in developing a composition plan and facilitating communication with creditors. Creditors play a strategic role because they have the right to vote on whether to accept or reject the restructuring proposal. The interaction between these three actors reflects a procedural design that is collective and deliberative.

The voting and homologation systems are crucial phases in determining the success of the PKPU. Article 281 of Law Number 37 of 2004 stipulates the requirements for approval of a composition plan, including the requirement for a certain majority of creditors present and representing a specific amount of receivables. This voting mechanism aims to create collective legitimacy for the restructuring outcome. Once the composition plan is approved, the court performs homologation as a form of ratification, granting it a legally binding force for all parties. This stage demonstrates that the success of a PKPU is highly dependent on the balance of interests and the quality of negotiations between debtors and creditors.

The preventive function of PKPU can be understood through a theoretical approach that positions restructuring as an early intervention against potential financial failure. Article 222 paragraph (2) of Law Number 37 of 2004 opens the door for debtors who anticipate being unable to continue paying their debts to apply for a PKPU before the insolvency condition reaches a critical stage. This mechanism provides an opportunity for companies to reorganize without the pressure of immediate liquidation. The early intervention perspective views restructuring as a proactive measure that maintains economic stability and minimizes systemic losses. The preventive use of PKPU requires an understanding that payment failure does not always equate to permanent business failure.

The concept of preventive restructuring has become widespread in the global legal system, particularly following various economic crises that demonstrated the importance of corporate rescue mechanisms. The European Union, for example, introduced Directive (EU) 2019/1023 on preventive restructuring frameworks, which provides a legal framework for early restructuring. The central principle of this approach is to provide debtors with the opportunity to reorganize before insolvency becomes inevitable. This international model has inspired other countries to strengthen flexible restructuring mechanisms. Comparison with global practices helps understand the position of the PKPU as part of a broader international trend.

The PKPU's position within Indonesia's insolvency law regime is unique because it sits between restructuring mechanisms and bankruptcy procedures. The PKPU does not exist separately from the bankruptcy system but rather forms an integral part with a close relationship to the possibility of a bankruptcy declaration. When a composition plan fails to be approved or

implemented, the court can declare the debtor bankrupt, as stipulated in Article 289 of Law Number 37 of 2004. This relationship creates a dynamic in which the PKPU can be a means of rescue or even a first step toward liquidation. This normative structure has given rise to a debate about the extent to which the PKPU truly functions as a preventive mechanism.

PKPU is often viewed as an alternative to bankruptcy, but in practice, it can also serve as a prerequisite for liquidation. This ambivalence stems from the legal design, which allows for a rapid transition from the restructuring process to a bankruptcy declaration if negotiations fail. This dualistic nature presents challenges for the parties, particularly when the restructuring period is limited or the creditors' interests do not align with the debtor's plans. The legal system strives to balance the need for procedural efficiency with the protection of the company's economic value. An analysis of the PKPU's position within Indonesia's insolvency regime opens up space for reflection on its effectiveness as a truly preventive restructuring instrument

Problems in the Implementation of the PKPU and the Distortion of the Restructuring Function

The gap between norms and practice in the implementation of the PKPU is a key issue frequently discussed in bankruptcy law discourse. Normatively, the PKPU is designed as a means of debt restructuring, providing debtors with the opportunity to settle with creditors without having to go through the liquidation process. Judicial practice, however, shows many cases in which PKPUs result in bankruptcy declarations after the settlement plan fails to be approved or implemented. This situation raises questions about the effectiveness of the existing legal design and whether the PKPU procedure truly facilitates restructuring optimally. This discrepancy between normative objectives and empirical results creates the impression that the PKPU's preventive function has not been functioning as expected.

The distortion of the restructuring function arises when the PKPU is often viewed as a formal step before the bankruptcy process. Many parties use the PKPU as a litigation strategy to test legal positions or accelerate pressure on debtors. The restructuring orientation is diminished when the negotiation process is formalistic without substantive efforts to reach realistic business solutions. This situation demonstrates that the success of restructuring is determined not only by legal regulations but also by how actors interpret the mechanism. The distortion of function can undermine confidence in the PKPU as a business rescue instrument.

The dominance of creditor interests is another factor influencing the PKPU process. The majority-based voting system significantly influences certain creditor groups in determining the fate of the restructuring plan. Creditors with significant receivables tend to hold strategic positions in shaping collective decisions. This structure can create a situation in which long-term restructuring interests are not always the top priority. A preference for a quick resolution through liquidation often arises when creditors perceive the restructuring risks as too high.

The risk of abuse in the majority voting mechanism is an issue that requires critical consideration. Decisions made through a majority system do not always reflect the balance of interests of all creditors or the sustainability of the debtor's business. It is possible that certain creditor groups may use their voting rights to influence outcomes that benefit them individually. This mechanism can create conflicts of interest that compromise the objectivity of the restructuring process. Discussions regarding the need to strengthen mechanisms to protect minority creditors and debtors often arise in response to this potential abuse.

The imbalance of bargaining power between debtors and creditors is also a significant factor in the dynamics of PKPU proceedings. Debtors in difficult financial circumstances often find themselves in a weak negotiating position, especially when facing institutional creditors with greater legal resources. The negotiation process can become a pressure arena, forcing debtors to accept unrealistic terms. This situation has the potential to result in a restructuring plan that is difficult to sustain. This imbalance in bargaining power impacts the quality of the restructuring outcome and the chances of long-term success.

Weaknesses in the PKPU procedural design also contribute to various implementation problems. The relatively simple PKPU application requirements open up the possibility of using this mechanism for strategic purposes other than restructuring. The low application threshold makes it easy for certain parties to initiate the PKPU process without a thorough evaluation of the debtor's financial condition. This situation can create initial pressure that impacts the company's operational stability. Evaluation of the procedural design is crucial to ensure that the PKPU is truly used for its intended purpose.

The limited restructuring period is also often considered an obstacle to achieving effective restructuring. The debt restructuring process requires business analysis, intensive negotiations, and a re-planning of the company's financial strategy. Tight deadlines can encourage hasty, ill-considered decisions. Time pressure often leads parties to choose a quick fix over a sustainable one. Criticism of the PKPU deadline arises because business restructuring is inherently a complex process that requires flexibility.

The lack of a comprehensive viability assessment mechanism is another weakness in the PKPU's design. An assessment of the debtor's business viability should be the primary factor in determining whether restructuring is feasible. The existing system does not yet fully provide objective evaluation standards for assessing business prospects. Without adequate feasibility analysis, restructuring decisions are often based on the subjective perceptions of the parties. This situation increases the risk of failure of the restructuring plan and increases the likelihood of ending in bankruptcy.

The liquidation-centric paradigm in judicial practice also influences the implementation of PKPU. The orientation toward settlement through liquidation is still evident in various decisions that prioritize payment certainty. Judges are often faced with the dilemma of maintaining business continuity and ensuring that creditors' rights are fulfilled. Legal interpretations that emphasize enforcement can narrow the scope for restructuring. This paradigm is closely related to the historical development of bankruptcy law, which has been oriented toward debt settlement from the outset.

The bankruptcy legal culture, which emphasizes enforcement, also shapes the perceptions of PKPU by legal practitioners. Legal practitioners, creditors, and debtors bring understandings influenced by previous experiences, so restructuring is not always the primary option. A mindset that places bankruptcy as the ultimate solution can reduce the motivation to seriously explore restructuring options. This paradigm shift requires adaptation not only to written regulations but also to the perspectives of legal actors. Discussions regarding PKPU reform often lead to the need for changes in legal culture so that preventive functions can run more effectively.

Reconstruction and Optimization of PKPU (Commercial Debt Restructuring) Based on Preventive Principles

The preventive principle can be understood as a new paradigm that places debt restructuring in the early stages, before the debtor's financial condition reaches a point of irreversible failure. This approach is based on the understanding that late legal intervention often narrows the scope for business rescue. The preventive model directs the bankruptcy system to detect insolvency risks early and provides more flexible resolution mechanisms. This shift in orientation requires adjustments to regulatory design and the perspectives of legal actors regarding the objectives of restructuring. The preventive principle seeks to shift the focus from reacting to failure to more proactive risk management.

The concept of an early rescue model is an important part of the preventive paradigm because it provides companies with the opportunity to reorganize before their economic value declines drastically. Early rescue is not only related to legal protection for debtors but also concerns the stability of business relationships with creditors, employees, and business partners. Early intervention can safeguard a company's reputation and reduce the social costs arising from liquidation. This approach positions restructuring as a rational recovery strategy, rather than simply a form of deferral of obligations. International practice shows that the success of restructuring is often determined by the timing of intervention.

Preserving going concern value provides a strong economic foundation for implementing the preventive principle. A company's value lies not only in its liquidated physical assets, but also in its business network, human resources, and market potential. Premature liquidation risks permanently eliminating this value. Effective restructuring seeks to preserve the business's value, ensuring it remains productive and provides benefits to all stakeholders. This perspective positions bankruptcy law as an instrument supporting economic sustainability, not simply a means of debt settlement.

Comparatively, preventive restructuring models can be found in various legal systems that prioritize business rescue. The European Union, through Directive (EU) 2019/1023, introduced a preventive restructuring framework that provides room for debtors to negotiate with creditors before insolvency becomes permanent. The United States, through Chapter 11 of its Bankruptcy Code, provides an example of a relatively flexible, business-governance-oriented reorganization mechanism. Several Asian jurisdictions have developed similar approaches, adapting to local economic characteristics. This comparison illustrates how optimizing PKPU can learn from best practices that have been developed globally.

The distinction between the debtor-in-possession and creditor-control models is a key issue in modern restructuring discourse. The debtor-in-possession system allows debtors to continue managing their businesses during the restructuring process with specific oversight. This approach aims to maintain operational continuity and utilize the debtor's knowledge of their business. The creditor-control model tends to give creditors a greater role in determining the direction of the restructuring. Selecting the right approach requires a balance between creditor protection and business recovery opportunities.

Reconstructing the procedural design of the PKPU is a crucial step to ensure the effective implementation of preventive principles. Reformulation addresses not only technical aspects but also a paradigm shift in the function of the PKPU as a business rescue mechanism. The procedural design needs to allow for more substantial negotiations and reduce pressures that

drive the process toward liquidation. These changes can include adjustments to procedural stages and decision-making mechanisms. A reconstructive approach guides the legal system toward a balance between procedural efficiency and the quality of restructuring outcomes.

Reinterpreting the threshold for PKPU applications could be part of this optimization effort. A threshold that is too low could potentially open the door to the use of PKPU for strategic purposes not necessarily related to restructuring. An initial assessment of the debtor's financial condition can help ensure that PKPU applications are filed with a genuine intention to restructure. This mechanism can also prevent procedural abuse that could harm business stability. The application threshold evaluation aims to maintain system integrity while improving process effectiveness.

The business feasibility assessment, or viability test, is a crucial element that needs to be strengthened in the design of a PKPU. A feasibility analysis helps determine whether a company still has a chance of recovery through restructuring. This assessment can involve financial, operational, and long-term business strategy aspects. Clear evaluation standards provide an objective basis for the court and the parties in making decisions. The viability test also helps mitigate the risk of unrealistic restructuring and minimizes the failure of the restructuring plan.

Reformulating the voting mechanism is a frequently discussed issue in PKPU reconstruction efforts. A majority-based voting system has the advantage of creating collective legitimacy, but also carries the risk of domination by certain groups. Strengthening protection for minority creditors and debtors can improve the quality of decisions. Alternatives such as class voting or a cramdown mechanism can be considered to create a balance of interests. This reformulation aims to ensure that restructuring is based not only on voter power but also on the substantive feasibility of the plan.

Strengthening protection for solvent debtors is an important aspect of the preventive principle. Debtors with business prospects often need time and space to negotiate to improve their financial condition. The legal system can provide temporary protection from individual execution actions to ensure the restructuring is effective. This protection does not diminish creditors' rights, but rather creates a balance so that the restructuring process proceeds rationally. This approach encourages the creation of more sustainable solutions for all parties.

Parameters for optimizing PKPU need to be clearly formulated so that the success of the restructuring can be objectively measured. Indicators of success can include the level of business sustainability after restructuring, creditor satisfaction with payment outcomes, and the stability of long-term business relationships. A balance of interests between creditors and debtors is a crucial element in determining the legitimacy of the bankruptcy legal system. Economic efficiency and substantive justice must be considered in assessing the effectiveness of the restructuring mechanism. Developing these parameters helps ensure that PKPU optimization is not merely normative but also has a real impact on legal and economic practice.

CONCLUSION

The PKPU, as a legal instrument designed to encourage debt restructuring, has not yet fully functioned as an effective preventive mechanism in practice. The normative objective of PKPU as a means of business rescue often clashes with procedural realities that actually push the process toward liquidation. The regulatory structure and implementation practices demonstrate a bias that favors bankruptcy resolution over ongoing restructuring. The majority

voting system, limited restructuring time, and the lack of a business feasibility assessment mechanism are factors that influence the direction of the PKPU process. The bankruptcy legal paradigm, which is still oriented toward creditor enforcement, contributes to these dynamics, resulting in an underdevelopment of the preventive function.

Reconstruction efforts are needed not only at the technical procedural level, but also at the paradigm level underlying the bankruptcy legal system. Reformulation of PKPU regulations can be directed at strengthening restructuring designs that provide more substantive negotiation space and proportional protection for debtors with remaining business prospects. Integration of preventive restructuring principles can be achieved through adjusting the application threshold, implementing a viability assessment, and developing a more balanced voting mechanism. Strengthening the restructuring function also requires a shift in perspective among legal actors so that the PKPU is no longer perceived as a step toward bankruptcy, but rather as a mechanism for preserving economic value. This approach is expected to create a balance between economic efficiency and substantive justice in Indonesia's bankruptcy legal system.

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