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Legal Politics on the Regulation of Obligations to Hold General Meeting of Shareholders in Law Number 40 of 2007 concerning Limited Liability Companies*

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Abstract

The implementation of the General Meeting of Shareholders (GMS) has been regulated in law number 40 of 2007 concerning Limited Liability Companies. However, it should be noted that in the implementation two implementations must be considered, namely the implementation of an open and closed GMS, each of which has differences and its own rules. Besides, the implementation of the GMS if it can be done in the form of a teleconference which has different points of view from several parties. It should also be noted that the implementation of General Shareholders (GMS) has weaknesses and strengths that must also be known as stated in law number 40 of 2007 concerning Limited Liability Companies. In this paper, the author uses descriptive qualitative research methodology to make it easier for the author to explain the implementation of the General Meeting of Shareholders (GMS) considering that this knowledge is indispensable for law students in particular and parties from government and private agencies as one of the ingredients. writing and research in general.

Keywords: GMS, Limited Liability Company, Company Law, Media Teleconference

Abstrak

Pelaksanaan Rapat Umum Pemegang Saham (RUPS) sudah diatur dalam undang-undang nomor 40 tahun 2007 tentang Perseroan Terbatas. Namun perlu diketahui dalam penyelenggaraannya terdapat dua pelaksanaan yang harus diperhatikan, yaitu pelaksanaan RUPS terbuka dan tertutup yang masing-masingnya terdapat perbedaan dan aturannya sendiri. Selain itu, pelaksanaan RUPS jika bisa dilakukan dalam bentuk teleconference yang memiliki sudut pandang berbeda dari beberapa pihak. Dan perlu diketahui juga bahwa pelaksanaan Umum Pemegang Saham (RUPS) memiliki kelemahan dan kelebihan juga yang harus diketahui juga seperti yang disebutkan dalam undang-undang nomor 40 tahun 2007 tentang Perseroan Terbatas. Dalam penulisan ini, penulis menggunakan metodologi penelitian kualitatif deskriptif guna untuk lebih memudahkan penulis untuk menjelaskan tentang Pelaksanaan Rapat Umum Pemegang Saham (RUPS) mengingat pengetahuan ini sangat diperlukan bagi kalangan mahasiswa hukum secara khususnya dan pihak-pihak dari instansi pemerintah maupun swasta sebagai salah satu bahan tulisan maupun penelitian pada umumnya.

Kata Kunci: RUPS, Perseroan Terbatas, UUPT, Media Teleconference

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A. INTRODUCTION

The existence of a Limited Liability Company is a means of channeling labor and also has a significant contribution as a source of state revenue, especially from the tax sector.⁴ After the issuance of the Limited Liability Company Law of 1995, the company's legal regulations on August 16, 2007, were amended and renewed with the enactment of Law Number 40 of 2007 concerning Limited Liability Companies. With the promulgation of the new Limited Liability Company Law, the old Law Number 1 of 1995 concerning Limited Liability Companies is revoked and declared no longer valid.⁵

The form of a limited liability company is the dominant form of enterprise because in doing business in Indonesia form a limited liability company is used as a requirement for conducting business.⁶ Company Limited as stipulated by Act No. 40 of 2007 on Limited Liability Company, hereinafter referred to as Limited Liability Company statute is a legal entity.

One important thing that must be done by the company to the implementation of rights and obligations is decision-making. Limited Liability Companies have organs to achieve their goals, including the General Meeting of Shareholders (GMS), the Board of Directors, and the Board of Commissioners. General Meeting of Shareholders (AGM) as an organ for a decision is the most important in the running of the company. The results of such decisions are then implemented by the board of directors with the supervisory board of commissioners.

In the Limited Liability Company Law in Article 1 point 2 it is stipulated that there are three organs in a Limited Liability Company, namely the General Meeting of Shareholders, the Board of Directors, and the Board of Commissioners. Where each of these organs has their respective functions in the Limited Liability Company. Among the three organs, the General Meeting of Shareholders (GMS) is the highest power holder in a Limited Liability Company which has authority not possessed by the board of directors or the board of commissioners who can make decisions according to certain procedures and conditions as regulated in the Limited Liability Company Law and Articles of Association of Limited Liability Companies.⁷

The General Meeting of Shareholders (GMS) is an organ of a Limited Liability Company that has exclusive authority not given to the Board of Directors and the Board of Commissioners. However, this does not mean that the GMS is the highest above other organs.⁸ The GMS consists of the annual GMS and other GMS, which

⁴ Kurniawan, Tanggung Jawab Direksi Dalam Kepailitan Perseroan Terbatas Berdasarkan Undang-Undang Perseroan Terbatas, *Mimbar Hukum*, Volume 24, Nomor 2, Juni 2012, p.214.

⁵ Muhammad Yusron Yuwono., *Perkembangan Kewenangan Rapat Umum Pemegang Saham(Rups) Perseroan Terbatas di Indonesia.*, Notarius• Edisi 08 Nomor 2 September (2015), ISSN:2086-1702.

⁶ Adrian Sutedi, 2015, *Buku Pintar Hukum Perseroan Terbatas*, Raih Asa Sukses, Jakarta, p.8.

⁷ Munir Fuady, *Perseroan Terbatas Paradigma Baru*, Citra Aditya Bakti, Bandung, 2003, p.113

⁸ Parasian Simanungkalit, *RUPS Kaitannya dengan Tanggung Jawab Direksi pada Perseroan Terbatas*, (Jakarta: Yayasan Wajar Hidup, 2006), p.68.

annually must be held at the latest six months after the last financial year. Meanwhile, the Extraordinary GMS can be held at any time based on the needs of the company. The Board of Directors is the Company's organ which is authorized and fully responsible for the management of the Company for the interests of the Company, following the aims and objectives of the Company and represents the Company, both inside and outside the court following the provisions of the articles of association.⁹

The procedure for holding a General Meeting of Shareholders (GMS) is by calling all shareholders to be present at a place, such as at the company's position or in another place that does not conflict with the company's Articles of Association.

In its implementation, the GMS is held by direct meeting by shareholders at the domicile of the Limited Liability Company or at the place where the Limited Liability Company conducts its business activities, which is in the territory of the State of Indonesia. Or utilizing electronic media that allows all GMS participants to see and hear directly and participate in the GMS. The GMS must be held following the interests of the company and with due observance of the articles of association and laws and regulations as well as with adequate preparation so that it can take legal decisions.¹⁰

B. METHODS

In this study, researchers used a qualitative methodology. The research approach used is a statute approach, namely an approach using legislation and regulations.¹¹ The nature of the research used is descriptive research which in this study will provide a detailed, systematic, and comprehensive description and data regarding everything related to research. The inference is done by using qualitative methods that exposure with a systematic deductive sentence to provide a clear picture answer to the problems that exist and ultimately expressed in descriptive form.

C. RESULTS AND DISCUSSION

1. Implementation of GMS Open and Closed

The authority of the GMS is an exclusive authority, where the authority is only owned by the GMS and is not owned by other organs of the Limited Liability Company. The authority of the GMS is said to be residual, which means that the board of directors has the authority to manage Limited Liability Companies and the Commissioner to oversee it, whereas in principle, for the GMS the authority is not detailed, but only gets the remaining authority which is not given to the Directors and Commissioners.¹²

⁹ Mohamad Anwar, *Jurnal Sekretari* Vol. 5 No. 1, Januari 2018

¹⁰ *Pedoman Umum Good Corporate Governance Indonesia*, Komite Nasional Kebijakan Governance, 2006.

¹¹ Peter Mahmud Marzuki. 2005. *Penelitian Hukum*, Jakarta: Kencana Prenada Media Group.

¹² Munir Fuady, *Op., Cit.*, p.140

There are several differences in the process of the General Meeting of Shareholders (GMS) of a Limited Liability Company and the General Meeting of Shareholders of an Open Company. For example in the General Shareholders Meeting of the Open do notifications and announcements first before calling the General Meeting of Shareholders. While the General Meeting of Shareholders Closed do not notice and the announcement of the General Meeting of Shareholders.

Some of the differences can be seen in several ways; that is: *First*, the place to hold the GMS. In the GMS of Limited Liability Companies it is regulated in Article 76 paragraph (1), (3), (4), and (5) Company Law, namely: 1). At the domicile of the Company; 2). At the place where the Company carries out its main business activities as stipulated in the articles of association; 3). Held anywhere as long as it is still in the territory of Indonesia if the GMS is present and/or represented by all shareholders and all shareholders agree to hold a GMS with a certain agenda. This GMS can decide if the decision is unanimously approved. Meanwhile, in the GMS of Public Limited Liability Companies it is regulated in article 76 paragraph (2) of the Limited Liability Company Law and Article 7 of the 2014 OJK Regulation, namely: 1). Place of domicile of the Public Company, 2). Where the Public Company conducts its main business activities, 3). Capital of the province where the domicile or place of main business activity of the Public Company, or 4). Province of domicile of the Stock Exchange where the shares of the Public Company are listed.¹³

Second: Notice of AGM, the AGM closed there while at the AGM Open stipulated in Article 8 of Regulation of the Financial Services Authority (FSA) in 2014, namely: 1. The public limited liability company must first give notice agenda item clearly and in detail to the Financial Services Authority institutions no later than 5 (five) working days before the announcement of the GMS, excluding the date of the announcement of the GMS. If there is a change in the agenda of the meeting, the Public Limited Liability Company is obliged to submit changes to the agenda in question to the Financial Services Authority (OJK) no later than the invitation to the GMS.

Third: Announcement of the GMS, there is no closed GMS while the Open GMS is regulated in Article 83 paragraph (2) of the Limited Liability Company Law and Article 10 of the 2014 Financial Services Authority (OJK) Regulation, namely: Public Limited Liability Companies are required to announce the existence of a GMS to shareholders no later than 14 days before the invitation. This was done without taking into account the date of the announcement and the date of the summons. Announcement of the GMS at least contains 1. provisions for shareholders who are entitled to attend the GMS, 2. provisions for shareholders who are entitled to propose the agenda of the meeting, 3. the date of the GMS, 4. the date of the summons for the GMS, 5. information that the Public Limited Liability Company is holding the GMS. because there is a request from the shareholder (especially if the GMS is held at the request of the shareholder).

For a Public Limited Liability Company whose shares are listed on the Stock Exchange, the announcement of the GMS must be through 1). One daily newspaper in

¹³ Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.

Indonesian language with national circulation, 2). Stock Exchange website; and, 3). the website of the Public Company, in Indonesian and foreign languages, provided that the foreign language used is at least English. Meanwhile, for a Public Limited Liability Company whose shares are not listed on the Stock Exchange, the announcement of the GMS must be through 1). One Indonesian language daily newspaper with national circulation, and 2). The Public Company website, in Indonesian and foreign languages, provided that the foreign language used is at least English. Evidence of the announcement of the GMS must be submitted to the Financial Services Authority no later than 2 (two) working days after the announcement of the GMS.¹⁴

Fourth: Summons to a GMS at a closed GMS is regulated in Article 82 of the Limited Liability Company Law, namely: Summons to a GMS shall be made no later than 14 days before the date of the GMS being held, excluding the date of the summons and the date of the GMS. In the summons for the GMS, the date, time, place, and agenda of the meeting shall be stated along with a notification that the materials to be discussed in the GMS are available at the Limited Liability Company office from the date of the summons for the GMS until the date the GMS is held. Summons to the GMS shall be made by registered mail and/or by advertisement in newspapers.

Meanwhile, the Open GMS is regulated in Article 83 paragraph (1) of the Limited Liability Company Law and Article 13 of the 2014 OJK Regulation, namely: Public Limited Liability Companies are required to call shareholders no later than 21 days before the GMS, excluding the date of the summons and the date of the GMS. Summons to the GMS contains at least the following information: a). the date of holding the GMS; b). the time for holding the GMS; c). the place for holding the GMS; d). provisions for shareholders who are entitled to attend the GMS (because in an Open Limited Liability Company, shares can transfer ownership quickly even a few days before the GMS is held); e). agenda items of the meeting including an explanation of each of the agenda items; and f). information stating that the material related to the agenda of the meeting is available to shareholders from the date of the summons for the GMS until the GMS is held.

For a Public Limited Liability Company whose shares are listed on the Stock Exchange, the GMS Summons must at least go through; a). One Indonesian language daily newspaper with national circulation; b). Stock Exchange website; and c). the website of the Public Company in Indonesian and foreign languages provided that the foreign language used is at least English. Meanwhile, for an Public Limited Company that is not listed on the Stock Exchange, the invitation to the GMS is at least through: a). One Indonesian language daily newspaper with national circulation; and b). the

¹⁴ Financial Services Authority Regulation Number 32 / POJK.04 / 2014 of 2014 concerning Planning and Implementation of General Meeting of Shareholders of Public Companies as amended by Regulation of the Financial Services Authority Number 10 / POJK.04 / 2017 of 2017 concerning Amendments to the Regulation of the Financial Services Authority Number 32 / POJK.04 / 2014 concerning Planning and Implementation of General Meeting of Shareholders of Public Companies.

website of the Public Company in Indonesian and foreign languages, provided that the foreign language used is at least English.¹⁵

Fifth, Circular Decisions. A closed GMS is regulated in Article 91 of the Limited Liability Company Law, namely; Shareholders can also make binding decisions outside the GMS on the condition that all shareholders with voting rights agree in writing by signing the proposal concerned. Meanwhile, in an Open GMS, decision making by a circular decision cannot be made because the shareholders in an Open Limited Liability Company include a very large number of people, so there is little possibility for decision making outside the GMS using a circular decision.

Sixth, the Chairman of the GMS. Closed GMS is not specified in the Company Law, while Open GMS is regulated in Article 22 of the 2014 Financial Services Authority (OJK) Regulation, namely: Chaired by a member of the Board of Commissioners who is appointed by the Board of Commissioners. If all members of the Board of Commissioners are absent or unable to attend, the GMS is chaired by a member of the Board of Directors appointed by the Board of Directors. If all members of the Board of Commissioners or members of the Board of Directors are absent or unable to attend, the GMS shall be chaired by shareholders attending the GMS who are appointed from and by the GMS participants.

Seventh, the voice of abstention. Closed GMS is not regulated in the Limited Liability Company Law, while in Open GMS it is regulated in Article 30 of the 2014 Financial Services Authority (OJK) Regulation, namely: Shareholders of shares with valid voting rights who attend the GMS, but abstain from voting is deemed to cast the same vote as the vote of the majority of shareholders who cast a vote.

Eighth, Notary. Based on Regulation VIII.D.1 - Decree of the Chairman of Bapepam Number Kep-37/PM/1996 concerning the Registration of Notaries Conducting Activities in the Capital Market, the Open GMS states that only notaries who have been registered with Bapepam can carry out activities in the capital market. one of which is to make a deed of the GMS of a Public Limited Company.¹⁶

The clarity of the difference between a private company and a public company occurs in terms of the procedures for the General Meeting of Shareholders (GMS). This departs from the difference in the provisions of the GMS that govern it. The GMS of Closed Company is regulated by the Limited Liability Company Law through Articles 75–91. For the General Meeting of Shareholders of Public Companies, there are more specific regulations, namely Financial Services Authority Regulation Number 32 / POJK.04 / 2014 of 2014 concerning Plans and Implementation of General Meeting of Shareholders of Public Companies as amended in Financial Services Authority Regulation No. 10 / POJK.04 / 2017 of 2017 concerning Amendments to Financial Services Authority Regulation Number 32 / POJK.04 / 2014 concerning Plans and Implementation of General Meeting of Shareholders of Public Companies.

¹⁵ Undang-Undang Nomor 40 Tahun 2007 tentang Perseroan Terbatas.

¹⁶ Peraturan VIII.D.1. Keputusan Ketua Bapepam Nomor Kep-37/PM/1996 tentang Pendaftaran Notaris yang Melakukan Kegiatan di Pasar Modal.

2. Electronic Implementation of the General Meeting of Shareholders (GMS)

Implementation of the GMS in the electronic media is an alternative implementation of the GMS if shareholders can not do it in the forum. In this case, there are two alternative implementations of the GMS to do. However, circular resolution, in this case, is an ultimatum remedium, where the implementation of the GMS by means of a circular resolution should be done if both methods, both forum and electronic media, cannot be implemented. Meanwhile, the implementation of the GMS by means of a forum is a manifestation of one of the rights of shareholders in supervising their company.¹⁷ Because apart from being the decision maker through the GMS, shareholders also have the right to supervise the company and receive information about the condition of the company while still paying attention to the rights and authorities of members of the board of directors as management of the company.

Furthermore, other provisions regarding the GMS can be seen in the Limited Liability Company Law with the following details: a). The obligation to hold a GMS by the Board of Directors (Article 79 paragraph (1)); b). Request for a GMS by the Shareholders and the Board of Commissioners (Article 79 paragraph (2)); c). Reasons for requesting the GMS (Article 79 paragraph (30)); d). Provisions regarding formal summons to shareholders prior to the GMS (Article 82 paragraph (1) and (2)); e). Place for holding the GMS (Article 76); f). Provisions for the GMS through Electronic Media (Article 77). Article 91 of the Limited Liability Company Law requires that in implementing a circular resolution all shareholders must agree and sign a circular containing the decision.

The circular resolution itself is created under the hand and then taken to the notary to be made a notarial deed to be made into a Deed.¹⁸ Deed meeting decision statement is intended that the next time there is a dispute, then the deed of declaration of this meeting decision states that the results are correct their circular resolution and becomes perfect evidence in the dispute.

The Limited Liability Company Law regulates the steps and quorum requirements for amendments to the articles of association. The Limited Liability Company Law stipulates that in amending the articles of association at least 2/3 of the shareholders must be present at the meeting. Besides, according to Article 19 of the Limited Liability Company Law, it is stated that amendments to the articles of association are stipulated by a GMS and the agenda concerning amendments to the articles of association must be clearly stated in the summons for the GMS. This means that in this case, an amendment to the articles of association must be determined by the

¹⁷ Komite Nasional Kebijakan Governance, *Pedoman Umum Good Corporate Governance Indonesia*, Bab IV, 2006, p.21.

¹⁸ Fadlyna Ulfa Faisal, *Pelaksanaan Circular Resolution Pada Perseroan Terbatas*, Program Pascasarjana, Fakultas Hukum Universitas Hassnudin, Makassar, p.4.

GMS. Besides, circular resolutions are not in themselves the GMS, they just have the same legal force as the GMS.¹⁹

It should also be noted that the problem is the limitation on the making of notary deeds electronically in Article 5 paragraph (4) of Law Number 11 the Year 2008 concerning Electronic Information and Transactions, including 1). The validity of the GMS teleconference Authentic Deed according to Law Number 2 of 2014 concerning the Position of Notary Public; 2). The validity of the GMS teleconference Authentic Deed according to Article 77 of the Limited Liability Company Law; 3). The validity of the GMS teleconference Authentic Deed according to the Law on Electronic Information and Transactions; 4). The validity of the original GMS teleconference deed according to the Indonesian Civil Code.

3. Shortcomings and weaknesses of the Limited Liability Company Act Related to the Implementation of the General Meeting of Shareholders (GMS)

Article 77 of Law Number 40 Year 2007 regarding Limited Liability Company provides that the Annual General Meeting of Shareholders (GMS) can be conducted via teleconference, videoconference, or electronic media that enable all participants of the GMS notice and hearing as well as directly participate in the meeting.

Article 77 of Law Number 40 of 2007 states that 1). Apart from organizing a GMS as referred to in Article 76, a GMS can also be conducted through teleconferencing, video conferencing, or other electronic media that allows all GMS participants to see and hear one another directly and participate in meetings; 2). Quorum requirements and decision-making requirements are requirements as regulated in this Law and/or as stipulated in the Company's articles of association; 3). The requirements as referred to in paragraph (2) shall be calculated based on the participation of the GMS participants as referred to in paragraphs (1); 4). (2) Minutes of the meeting shall be made for every GMS as referred to in paragraph (1), which shall be approved and signed by all GMS participants.

From Article 77 of the Law on Limited Liability Companies above, it can be seen that in the GMS activities do not have to be done physically face to face but can be done employing teleconferencing, video conferencing, or other electronic media means and requires all participants to be seen and hear directly and participate in the GMS activities. However, there are differences between teleconferencing and video conferencing activities. Teleconferencing using a telephone or other audio source or even a fairly sophisticated mobile phone. Teleconferencing can take place with software that can connect voice lines and also requires sound devices such as mic, speaker or headset and mic in other words teleconferencing activities only transfer audio/voice data.

¹⁹ Pahlefi., Eksistensi RUPS sebagai Organ Perseroan Terkait Dengan Pasal 91 Undang-Undang Perseroan Terbatas., Jurnal Ilmu Hukum, Volume 7 Nomor 2, Oktober 2016

Meanwhile, video conferencing uses video as well as sound. Video conferencing can be done over the internet and requires a video device, such as a webcam or camera, mic, and speakers, or a headset with a mic. From this explanation, it can be seen that the most basic and distinguishing thing between teleconferencing and video conferencing is the ability to transfer data. Teleconferencing is only capable of transferring audio or voice data whereas video conferencing is capable of transferring audio or voice data as well as video or images.

Based on Article 77 of the Limited Liability Company Law, it can be explained that in addition to conventional GMS, certain media can also be carried out, namely: (1) Teleconferencing Media; (2) Video Conference; or (3) Other electronic media facilities. The media that will be used in the GMS based on Article 77 of the Limited Liability Company Law are alternative, in the sense that it depends on the competent party in selecting the media used in the GMS.²⁰

The choice of media referred to above must meet at least three cumulative requirements, namely: 1. Participants must see each other directly; 2. Participants must hear each other directly; 3. Participants participate in the meeting.

This means that, if one of the conditions is not met, then the media is not eligible to be used as media in the implementation of the GMS.²¹ However, as previously explained, teleconferencing activities are only able to transfer audio or voice data and are not capable of transferring video data as in video conferencing activities. This means that the activities of the GMS Teleconference as stipulated in Article 77 of the Limited Liability Company Law are only able to fulfill the two conditions required in Article 77 of the Limited Liability Company Law, namely, participants must hear each other directly and participants participate in the meeting. The GMS Teleconference cannot fulfill the requirements that participants must see each other directly due to the inability of the teleconferencing media to transfer video or image data. This is the weakness contained in Article 77 of the Limited Liability Company Law.

Supposedly, if Article 77 paragraph (1) still wishes to include the GMS Teleconference as a medium that can be carried out by shareholders to carry out GMS activities, the article 77 paragraph (1) reads then becomes "In addition to organizing the GMS as referred to in Article 76 the GMS can also conduct through teleconferencing, video conferencing, or other means of electronic media that allow all GMS participants to see and/or hear each other directly and participate in meetings. " So that the conditions for seeing and hearing directly are no longer a condition that requires both of them to be fulfilled but if only one of them is fulfilled, namely that all GMS participants can hear each other directly, but cannot see directly, it will remain in line with the intent of Article 77 paragraph (1) of the Limited Liability Company Law.

²⁰ Ahmadi Miru, Makalah: "Cyber Notary Dari Sudut Pandang Sistem Hukum Indonesia dan Pemberlakuan Cyber Notary di Indonesia Ditinjau Dari Undang-undang Jabatan Notaris", Fakultas Hukum Universitas Hasanuddin, Makassar, 25 Juni, 2011, p.11.

²¹ Ahmadi Miru, Ibid, p.11-12

D. CONCLUSION

From the above discussion, it can be concluded that the following are the results of this research, namely:

1. Limited liability company (PT) is a form of a legal entity whose business capital comes from shares held by the owners. The responsibility of shareholders is limited and depends on the number of shares they own. In running a company in the form of a limited liability company, the share capital owned can be sold to other parties. This means that within the company it is very possible to change the ownership organization without having to establish a new company.
2. In general, the use of electronic documents has also been recognized by law with the issuance of Law Number 8 of 1997 concerning Company Documents.
3. The use of teleconferencing media at the General Meeting of Shareholders of the Limited Liability Company employing electronic records as valid evidence shall be subject to the regulatory provisions for the use of electronic documents, the minimum requirements of the Limited Liability Company Act, and the Information and Electronic Transactions Act. Apart from being applied to the criteria for the legality of the GMS conventionally and by teleconference, as well as the requirements for electronic signatures and electronic records found in the findings of the GMS.

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Pedoman Umum Good Corporate Governance Indonesia, Komite Nasional Kebijakan Governance, 2006.

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