

Reformulation of Regulations for Resignation of Regional Heads in Term of Office

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ABSTRACT : *The regulation of the Dismissal of the Regional Head as contained in Law Number 23 of 2014 concerning Regional Government has given the right for the Regional Head or Deputy Regional Head to resign by submitting his resignation at his own request. This has the potential to provide leeway for Regional Heads and/or Deputy Regional Heads to step down during their term of office which causes various legal impacts, including disruption of Regional Government performance due to vacancies, to injuring people's mandates due to violations of oaths or promises of office. This research is a normative legal research, by analyzing primary and secondary legal sources. The findings in this study indicate that there is no clear limit to "own request" as a condition for the dismissal of the Regional Head and/or Deputy Regional Head in Article 78 paragraph (1) letter b of Law Number 23 of 2014 concerning Regional Government. So that the interpretation of the meaning of the phrase has a very broad and even unlimited interpretation. The absence of clear boundaries can lead to many interpretations so that it does not guarantee the clarity of the formulation and can have implications for many things.*

KEYWORDS –*Reformulation, Implications, Resignation, Own Request*

I. INTRODUCTION

Every process of governance, both at the central and regional levels, always refers to the applicable positive law. With regard to the administration of regional government, Article 57 of Law Number 23 of 2014 concerning Regional Government explains that the administrators of provincial and district or city administrations consist of the Regional Head and DPRD assisted by Regional Apparatus. However, in practice, there were several cases of resignations of regional heads and deputy regional heads during their term of office. The rules for Dismissing Regional Heads are regulated in Law Number 23 of 2014 concerning Regional Government Article 78 paragraph (1) which reads, "*Regional heads and/or deputy regional heads resign because: a. die; b. own request; or c. dismissed*". Based on the provisions of letter b, it is possible for the Regional Head and/ or Deputy Regional Head to resign at any time during their term of office by submitting their resignation at their own request. This provision is blurred because it does not provide clear boundaries in terms of what the regional head and/ or deputy regional head's own request is allowed and not to carry out as a condition for resignation during the term of office.

For example, the case of the resignation of Anna Shopanah as the Regent of Indramayu in 2018 on the grounds that she wanted to focus on taking care of her family and her sick father. Anna used these personal reasons as the basis for submitting her resignation before her term of office expires in 2021. Another case example is the advancement of Joko Widodo in the 2014 presidential election, who at that time was still the Governor of DKI Jakarta, and finally resigned from his position because he was elected President. A similar case also occurred in the resignation of Sandiaga Uno as deputy governor of DKI Jakarta who also advanced in the presidential election nomination market for the 2019-2024 period. From the examples

of cases presented, it can be seen that the dismissal of the Regional Head at his own request carried out during his term of office is legal and has been regulated by law, but if you look at the process in obtaining a position so that he becomes a Regional Head and/or Deputy Head Regions that carry the people's mandate, are elected by the people to run the wheels of government properly and then resign for very subjective reasons, considering that the elected Regional Heads and/or Deputy Regional Heads have ignored the integrity of morality and issues in the regions that are still their responsibility. Based on the explanation of the background above, the author is interested in taking the title of the article "Reformulation of Regulations for Resignation of Regional Heads and/or Deputy Regional Heads in Term of Office" with the aim of none other than so that a legal product can have a clear formulation and guarantee legal certainty for its users. This study focuses on answering the questions, (1) What are the legal implications arising from the resignation of the Regional Head and/or Deputy Regional Head during their term of office? (2) How is the reformulation of the regulation on the resignation of the Regional Head and/or Deputy Regional Head during the term of office?

II. RESEARCH METHOD

This type of research is a normative legal research using a statutory approach and a concept approach. According to Johnny Ibrahim, normative legal research is research that is focused on examining the application or rules or norms of positive law. This legal research is conducted by examining and analyzing positive law to find the appropriate law to be applied in life. The legal material analysis technique used is a qualitative juridical technique. Qualitative juridical techniques are carried out by interpreting primary legal materials. The collection of legal materials in this study uses an inventory of various laws and regulations related to the focus being studied.

III. RESULTS AND DISCUSSION

Regulation on the Dismissal of Regional Heads and/or Deputy Regional Heads in Law Number 23 of 2014 concerning Regional Government

Dismissal is often referred to as *impeachment* comes from the word "*to impeach*", which means to ask for accountability. If the charges are proven, then the punishment is "*removal from office*", or dismissal from office. The impeachment process is one of the powers held by parliament. This is a form of parliamentary control function over public officials who have been given the mandate by the people to carry out their duties and obligations. So that if a public official during his term of office is proven to have violated both those stipulated in the constitution and the applicable positive law, he can be faced with an *impeachment* process with the aim of removing the person concerned from his position (Fatkhurohman, 2019).

According to Law Number 23 of 2014, there are three substantive articles that explain the reasons for the regional government in this case the regional head can be dismissed. These provisions are contained in Articles 78, 79, and 80. Article 78 paragraph (1) reads, "The regional head and/or deputy regional head resign because: (a) death; (b) own request; or (c) dismissed. Then the mechanism for the dismissal of regional heads and/or deputy regional heads as stipulated in Article 79 paragraph (1) namely, the dismissal of regional heads and/or deputy regional heads as referred to in Article 78 paragraph (1) letters a and b and paragraphs (2) letters a and b are announced by the leadership of the DPRD in a plenary meeting and proposed by the leadership of the DPRD to the President through the Minister for governors and/or deputy governors and to the Minister through the governor as representatives of the Central Government for regents and/or deputy regents or mayors and/or deputy mayor to get a dismissal determination.

As a form of prevention, this law provides another alternative as stated in paragraph (2), namely if the leadership of the DPRD does not take action in proposing the dismissal of the regional head and/or regional head, the president can dismiss the regional head and/or head regions through the Minister's proposal. Either through the proposal or not through the proposal of the governor, the minister may dismiss the regent and/or deputy regent or mayor and/or deputy mayor as a form of implementing the function of the central government representative. As stated in Article 78 paragraph (2) letter c, letter d, and letter e, and/or letter f, the execution of the dismissal of the regional head and/or deputy regional head follows the provisions that the proposal for the dismissal of the regional head and/or deputy head regional governor and/or deputy governor level is addressed

to the president, and addressed to the minister if the regent and/or deputy regent or mayor and/or deputy mayor. The proposal must be based on the decision of the Supreme Court on the opinion of the DPRD. The Supreme Court must examine, hear, and decide on the opinion submitted by the DPRD no later than 30 days after the request is received and the decision is final.

Furthermore, the process of dismissing regional heads based on Law Number 23 of 2014 is contained in Article 78 paragraph (2) letter c, letter d, and letter e, and/or letter f, then the implementation of the dismissal of regional heads and/or deputy regional heads follows the provisions that the proposal to dismiss the regional head and/or deputy regional head at the governor and/or deputy governor level is addressed to the president, and addressed to the minister if the regent and/or deputy regent or mayor and/or deputy mayor. The proposal must be based on the decision of the Supreme Court on the opinion of the DPRD. The Supreme Court must examine, hear, and decide on the opinion submitted by the DPRD no later than 30 days after the request is received and the decision is final. If it turns out in the facts on the ground that it is stated that the regional head and/or deputy regional head are proven to have violated the prohibition stipulated by this law, then the leadership of the DPRD must submit the proposal directly to the president. The proposal received by the president must be responded to and dismissed by the regional head and/or deputy regional head in this case the governor and/or deputy governor no later than 30 days after the proposal is received. regent or mayor and/or deputy mayor.

In the context of reviewing the regulation of Regional Heads and/or Deputy Regional Heads, when viewed from the beginning of the formation of the Regional Government Law, namely Law Number 22 of 1999 concerning Regional Government, Law Number 32 of 2004 concerning Regional Government and Law Number 23 of 2014 concerning Regional Government, the discussion is only limited to the mechanism of the Regional Head and/or Deputy Regional Head being dismissed. Regarding the aspect of the limitation of the Regional Head and/or Deputy Regional Head who quit at his own request, it was not found. The results of the author's search regarding the aspect of the "own request" limitation in the minutes of the session and the academic text of the Regional Government Law have not been answered. Similarly, it is stated in the technical rules, namely in Government Regulation Law Number 6 of 2005 concerning Election, Ratification of Appointment, and Appointment of Regional Heads and Deputy Regional Heads, Elucidation of ARTICLE BY ARTICLE, Article 123 letter b states: "Dismissal at his own request does not eliminate the responsibility concerned while in office." Due to the aspect of the limitation of "own request" in the provisions of the legislation, it is necessary to reformulate the regulation on the resignation of the Regional Head and/or Deputy Regional Head during the term of office.

Interpretation of the meaning of the phrase "Own Request" in Article 78 paragraph (1) letter b of Law Number 23 of 2014 concerning Regional Government

As explained in the theory of the formation of laws and regulations that every legislation, in the formation of laws and regulations must fulfill several wrong principles, one of which is the principle of clarity of formulation. The principle of clarity of the formulation in question is that in the formation of laws and regulations, it must meet the technical requirements for the preparation of laws and regulations, systematics, choice of words or terms, as well as legal language that is clear and easy to understand so as not to cause various kinds of interpretations in its implementation. Therefore, clarity of formulation is mandatory for legislators to apply so that the conception and formulation of norms produced as legal products have a unanimous, harmonious interpretation, do not conflict and overlap with each other.

Based on the results of the study of the sound of the phrase "own request" as a condition for the dismissal of a regional head as stated in Article 78 paragraph (1) letter b of Law Number 23 of 2014 concerning Regional Government, this article does not reflect the clarity of the formulation, both in terms of word choice and in terms of the limitations of the meaning of the words used, the request itself has a very broad interpretation so that it is very difficult to reach a unanimous interpretation in terms of whether the request itself is allowed and not as a condition for the resignation of the Regional Head and/or Deputy Regional Head. Based on these considerations, the author uses the method of grammatical interpretation of the meaning of the phrase "own request".

As far as the author understands, the request itself is interpreted as personal freedom in the context of the fulfillment of Human Rights (HAM). In a country that adheres to a democratic system of government, personal freedom is one of the basic demands that must be met. This system guarantees the right of the people to express opinions and have a voice in the formation of laws and state principles that will be implemented on them. The state is also an important milestone for the reflection of justice, democracy and the protection of human rights, especially those related to the right to be elected and to vote which always upholds human rights, guarantees all citizens' rights together with their position in law and government with no exceptions (Bambang Waluyo, 2004).

Further reviewing the right to personal freedom, there is a political right to occupy public office which shows the existence of a freedom from the political and civil rights of citizens through periodic elections with *universal* and equal voting rights (Oki Wahju Budijanto, 2016). Political rights are one of the substantial elements that determine the success of building a state of law, protection of human rights, democracy in a country, and the position of political rights which is quite central in state life. Political rights are one of the human rights clusters. This right is closely related to the right to vote or *to vote (right to vote)* which is the *basic right* of every individual or citizen that must be guaranteed by the state. This is because the right to vote and to be elected is a right that is regulated in civil-political rights as rights owned by citizens who have sovereignty, also have the same position in the view of the state, there is no *discrimination* and are legal subjects (Budi Kristiarso, 2018). Vierdag categorizes these civil and political rights as *negative rights*, because to realize them the state must remain silent, not take action (*passive*), so the formulation uses *freedom from* (free from) (Krisdyatmiko, 2004).

The 1945 Constitution of the Republic of Indonesia and Law Number 12 of 2005 concerning Ratification of the Convention on Civil and Political Rights also guarantees juridically the right to vote and be elected as a political right in an inherent citizen's public office, to exercise the right to vote as political rights. As stated by John Locke & Rousseau that political rights including the right to vote and be elected in public office are included in the right to participate in government, which are human rights that must be protected (Mardenis, 2013). The same thing was also said by Bagir Manan, that civil rights recognize and protect the most fundamental rights of a human being related to his dignity as a private being, while political rights are related to public life (Bagir Manan, 2011).

From various points of view, the sound of the phrase "self-request" continues to reveal the ambiguity that makes the provisions regarding the terms of dismissal of the Regional Head or Deputy Regional Head a vague norm. The ambiguity of norms can lead to unclear interpretations so that multiple interpretations appear in a legal regulation. Multiple interpretations really need to be avoided in order to guarantee legal certainty. For this reason, it is appropriate for a rule that causes ambiguity to be changed so that it becomes a clear guideline and can be used better in the future.

Legal Implications of Resignation of Regional Heads in Term of Office for Disruption of Regional Government Performance

The phrase "own request" in Article 78 paragraph (1) letter b of Law Number 23 of 2014 concerning Regional Government as a condition for the dismissal of the Regional Head and/or Deputy Regional Head, which is then used as the basis for the Regional Head or Deputy Regional Head to resign in term of office has an impact on the vacancy of the positions of the Regional Head and/or Deputy Regional Head so that it can interfere with the performance of the regional government. It is also explained in Article 60 of Law Number 23 of 2014 concerning Regional Government, the term of office of the Regional Head is 5 (five) years from the inauguration and thereafter can be re-elected in the same position only for one term of office.

Due to the very broad interpretation of the phrase "own request" which is often interpreted as a right owned by the Regional Head or Deputy Regional Head to be able to resign at any time even though his term of office has not ended. Yet when we look at a series of election procedures, Regional Head and / or Deputy Regional Head are public officials elected by *political toughest of recruits* or model of the elections (*elections*) that are directly (*direct*) to carry out the mandate of the people. So it can be said that in the public office there are public rights that must be fought for. The resignation of the Regional Head and/or Deputy Regional Head

may potentially lead to the failure of the principles of *Good Governance* and the invalidity of the principle of accountability in the administration of Regional Government.

As is known regarding the duties and functions of the Regional Head and Deputy Regional Head in running the wheels of government in the Region, the benchmark used is the realization of good governance or known as the principle of good governance. The opinion expressed by Michael Johnston, *good governance* is a competent management of resources and state affairs in an open, transparent, accountable, fair, and responsive way to the needs of the community (Muhammad Ali, 2015). On the other hand, *good governance* is often interpreted as *good governance* as an instrument to realize development goals and law enforcement in a country (Amir & Yarni, 2015). Then if it is concluded, *good governance* has the meaning of *good governance* in realizing development through regulations or policies that are responsive to the needs of the community. While the purpose of *good governance* itself is to measure the quality of governance in accordance with the portion owned by each institution (Maryam, 2016). Considering that the administration of government through institutions contains authority, responsibility, and control that affects people's lives, especially regarding the protection and enforcement of the rights of citizens (Muhammad Ali, 2015). So that if there is a vacancy caused by the resignation of the Regional Head and/or Deputy Regional Head during the term of office, the objectives of the principle of *good governance* or *good governance* will not be achieved.

Likewise, the impact on the failure of the principle of accountability in the administration of local government. According to Peter Guy, there are 3 types of accountability, namely: (1) financial accountability; (2) administrative accountability; and (3) public policy accountability (Duadji, 2012). Public accountability is a principle that ensures that every activity in the administration of government can be accounted for openly by actors to parties affected by the implementation of policies. Decision making in public organizations involves many parties. Therefore, it is natural that the policy formulation is the result of an agreement between the constituency of political leaders, technocrats, bureaucrats or administrators, as well as implementers in the field. From this description, the author emphasizes that accountability is not only about accountability in an organization, namely between subordinates and organizational leaders; but what is far more important is accountability to the people as owners and subjects of public services and development provided by government institutions.

Elucidation of Article 58 of Law Number 23 of 2014 concerning Regional Government, states that the principle of accountability is the principle that determines that every activity and the final result of the activities of state administrators must be accountable to the community or the people as the holder of the highest sovereignty of the state in accordance with the provisions of laws and regulations valid invitation. In line with the explanation of the article, Miriam Budiarmo defines accountability as the responsibility of those who are given the mandate to govern to those who give them the mandate (Budiarmo, 2009). If there is a vacancy due to the fact that the Regional Head and/or Deputy Regional Head resign at their own request on very subjective and personal grounds, it will be very disappointing to the people as the mandate giver who has entrusted the leadership and administration of government to solve problems in the area.

Legal Implications of Resignation of Regional Head and/or Deputy Regional Head in Term of Office for Violation of Oath or Promise of Office

Voters in determining the choice of a pair of regional heads are also based on a very good hope for them to be able to lead the community and their region to bring progress, increase welfare, as well as the independence and competitiveness of local communities. To be able to realize these conditions and expectations, sufficient time is needed, under the periodization of positions determined by law, which is 5 (five) years. Voters who have given the legality of political positions to regional heads must be followed by responsibilities to their constituents. At least it can be measured based on dedication, such as carrying out their duties according to their term of office (Arifulloh, 2015).

Regional Heads and/or Deputy Regional Heads who resign during their term of office can be said to have violated the oath or promise of office which is categorized as an unlawful act. When referring to the oath of office pronounced at the time of the inauguration as explained in Article 18 paragraph (3) of the Presidential Regulation of the Republic of Indonesia Law Number 16 of 2016 concerning Procedures for the Inauguration of

Governors and Deputy Governors, Regents and Deputy Regents as well as Mayors and Deputy Mayors, that "*The Regional Head will fulfill his obligations as well as possible and carry out all laws and regulations as straight as possible*". This is because the Regional Head and/or Deputy Regional Head have violated the contents of the concept of government action, which means that every policy taken by public officials in this case is the Regional Head and/or Deputy Regional Head to cause legal consequences in the field of government or state administration. Every policy issued by the Regional Head must be accountable.

This is because the Regional Head and/or Deputy Regional Head have violated the contents of the concept of government action, which means that every policy taken by public officials in this case is the Regional Head and/or Deputy Regional Head to cause legal consequences in the field of government or state administration. Every policy issued by the Regional Head must be accountable (Muchsan, 1997). Based on this understanding, it appears that there are several elements contained in it, the elements of the government's legal action are as follows:

1. The act is carried out by government officials in their position as rulers and as government equipment with their own initiatives and responsibilities;
2. The act is carried out in the context of carrying out government functions;
3. The act is intended as a means to cause legal consequences in the field of administration; and
4. The act concerned is carried out in the context of maintaining the interests of the state and the people.

In relation to a state of law that puts forward the principle of legality, namely administrative law actions must be based on applicable laws and regulations. In principle, administrative legal action can only be carried out in terms and in a manner that has been regulated and permitted by laws and regulations. In the principle of governance, the Regional Head and/or Deputy Regional Head who violates the oath and promise of office is very contrary to the principle of policy in the administration of the public interest.

Principles of Reformulation of Regulating the Resignation of Regional Heads and/or Deputy Regional Heads

1. Granting authority to DPRD to reject the proposal for resignation of the regional head and/or deputy regional head

In the event of the dismissal of the Regional Head and/or Deputy Regional Head on the basis of his own request as stated in Article 78 paragraph (1) letter b of Law Number 23 of 2014 concerning Regional Government, the dismissal is notified to the leadership of the Regional People's Representative Council (DPRD) for decided in the Plenary Meeting and proposed by the leadership of the DPRD. Unfortunately, the DPRD here is only authorized to propose the dismissal of the Regional Head and/or Deputy Regional Head and is not authorized to reject the resignation of the Regional Head and/or Deputy Regional Head. As a follow-up to the Law on Regional Government and the Law on technical regulations under it, namely Government Regulation Number 6 of 2005 concerning the Election, Ratification of Appointments, and Dismissal of Regional Heads and Deputy Regional Heads as amended by Government Regulation Number 17 of 2005 Amendments Based on Government Regulation Number 6 of 2005 concerning Election, Ratification of Appointments, and Dismissal of Regional Heads and Deputy Regional Heads, the second time by Government Regulation Number 25 of 2007, the third time by Government Regulation Number 49 of 2008, and the fourth time by Government Regulation Number 78 In 2012, the author did not find any further regulation regarding the possibility of the DPRD rejecting the dismissal of the Regional Head and/or Deputy Regional Head at his own request. The decision on the proposal is made at the Plenary Meeting and the approval rests with the Minister of Home Affairs. This is confirmed in Article 293 paragraph (1) letter d of Law Number 27 of 2009 concerning the People's Consultative Assembly, the People's Representative Council, the Regional Representatives Council, and the Regional People's Representative Council which reads: "*The Provincial DPRD has the duty and authority to propose the appointment*

and/or dismissal of the governor and/or deputy governor to the President through the Minister of Home Affairs to obtain approval for the appointment and/or dismissal."

Therefore, there is no term refusal to dismiss the DPRD, because the DPRD's authority is only limited to proposing the appointment or dismissal. In the author's view, it would be more effective if the DPRD was given the authority to reject the proposed dismissal of the Regional Head and/or Deputy Regional Head who resigned at their own request. This is intended so that the resignation procedure becomes more rigid and difficult to go through so that it is comparable to the process of obtaining his position as Regional Head and/or Deputy Regional Head, before finally being ratified by the Minister of Home Affairs.

2. The resignation of the regional head and/or deputy regional head must be with the approval of the supporting political party

The approval of the Supporting Political Party is how the pattern of the relationship between the political party and the elected Regional Head and/or Deputy Regional Head is. According to the author understanding, it is better if the supporting political party participates in guarding not only during the nomination, but also after being elected and serving as Regional Head and/or Deputy Regional Head. So that when he resigns from his position, he must go through the approval of the political party that carries it. Not only involved when filling positions after being left. So far, there are no arrangements that require the approval of a political party when a Regional Head and/or Deputy Regional Head resigns from his position.

3. There are strict regulations regarding the prohibition of the resignation of regional heads and/or deputy regional heads during their term of office

Provisions regarding Regional Heads and/or Deputy Regional Heads are generally regulated in Law Number 23 of 2014 concerning Regional Government. While the provisions regarding the election of Regional Heads are regulated in Government Regulation in substitute of Law Number 1 of 2014 concerning the Election of Governors, Regents, and Mayors which have been stipulated as law by Law Number 1 of 2015 and have been amended by Law Number 8 of 2015 was then amended for the second time by Law Number 10 of 2016. As explained in the law, the election of governors and deputy governors, regents and deputy regents, as well as mayors and deputy mayors is the exercise of people's sovereignty in the provinces and regencies/municipalities to elect the governor and deputy governor, regent and deputy regent, and mayor and deputy mayor directly and democratically. The positions of Regional Head and/or Deputy Regional Head obtained through direct elections by the people should have a different affinity with the previous election (Kacung Marijan, 2006). The term of office of the Regional Head and/or Deputy Regional Head should be maintained through a regulatory system in the regional government law so that it is carried out until the end on a clear and firm rule base. The importance of strengthening the positions of Regional Heads and/or Deputy Regional Heads is of course aimed at preventing resignations from taking place at their own request which can harm many parties, especially the people as mandates.

As the requirement for nominating which is mentioned in the General Elections Commission Regulation (PKPU) Law Number 1 of 2020, it is known that there is no requirement that states that the prospective head region prohibited resigned as Regional Head and/or Deputy Head while in his tenure. This means that the Regional Head and/or Deputy Regional Head may at any time resign from their position as regional head and/or deputy regional head. This also needs to be regulated in the form of a ban imposed as a condition for the nomination of Regional Heads and/or Deputy Regional Heads. So that later, there will be no more Regional Heads and/or Deputy Regional Heads who use unclear reasons to resign during their term of office.

IV. CONCLUSION

Based on the explanation above, the conclusions that can be drawn are the Regulations for the Dismissal of Regional Heads and/or Deputy Regional Heads as described in Article 78 paragraph (1) letter b of Law Number 23 of 2014 concerning Regional Government regarding the phrase "own request" as terms of dismissal in principle do not provide clarity of formulation and guarantee legal certainty. So that the sound of the article gives rise to many interpretations and has no limits in terms of what "own request" is granted as a condition of resignation. Based on the conceptual approach, the request itself as a condition for dismissal is motivated by the spirit of democracy in relation to the fulfillment of Human Rights. The request itself can be interpreted as personal freedom, where in a country that adheres to a democratic government system, personal freedom is one of the basic demands that must be fulfilled. The implications of the resignation of the Regional Head and/or Deputy Regional Head during this term of office will at least have an impact on the disruption of the performance of the regional government due to the occurrence of vacancies. This has led to the failure of the principle of accountability in the administration of local government and the failure to achieve the principle of good governance. Then another impact is the violation of an oath or promise of office which can be considered as a form of injury to the mandate that has been given by the people to the Regional Head and/or Deputy Regional Head to carry out the wheels of government as well as possible.

The main points of the reformulation of the regulation of the resignation of the Regional Head and/or Deputy Regional Head during the term of office are as follows:

1. Granting authority to the DPRD to reject the proposal for the resignation of the regional head and/or deputy regional head;
2. The resignation of the Regional Head and/or Deputy Regional Head must be with the intention of the Supporting Political Party;
3. There are strict regulations regarding the prohibition of the resignation of regional heads and/or deputy regional heads during their term of office.

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