

Juridical Analysis of General Securities of Bankruptcy

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Abstract. The rise of bankruptcy cases in Indonesia, moreover these cases involve other countries where the bankruptcy assets are abroad, this is the point of difficult for the court to take steps to execute the debtor's assets. The research conducted belongs to the type of normative legal research. This type of legal research refers to normative or statutory provisions regarding the General Confiscation of Bankrupt Debtors' Assets Outside the Indonesian Jurisdiction Area. The applicant submits a bankruptcy application to the Chief Justice of the Supreme Court through the Registrar, in this case by appointing an Advocate with a Curator license, so that the Chief Justice of the Supreme Court decides on the bankruptcy application by the judge in court. Furthermore, no later than two days after the application is registered, the Registrar will send a request for a declaration of bankruptcy to the Chief Justice of the Supreme Court. After the Head of Complaint gives his approval, the examination hearing will be held no later than 20 days from the date of registration of the application. The panel of judges will decide on the bankruptcy application after the examination session. If there is evidence that the bankruptcy requirements have been met, the bankruptcy application must be approved.

Keywords: Bankruptcy; Laws and Regulations; General Confiscation

1. Background

The increase in investment activities carried out by a country to meet its needs and increase its income is strongly correlated with global economic developments through today's free trade. Trade practices are increasingly used, and national borders are no longer seen as a barrier to economic activity. Many advantages are available. However, there are dangers associated with over-the-counter trading. One of the risks that can arise from the business side is when a business actor goes bankrupt. A debtor is said to be bankrupt when they are generally unable to pay their debts when they are due (due and due) or when their liabilities (debt) are grander than the value of their assets.

The business development process certainly has obstacles, one of which is that a company does not always have sufficient capital. The debtor needs the creditor as the owner of the capital so that a loan agreement is established between the creditor [1] and the debtor.[2] The debt agreement, of course, requires objects as collateral when in the future there is a default by the debtor, its guarantee will be used by the creditor until his rights to repayment of receivables are fulfilled, under Article 1131 Burgerlijk Wetboek (henceforth abbreviated as BW) which regulates as follows :[3]

“Every one of the resources of the borrower, both mobile and resolute, both existing and new ones, will be accessible later on. Turn into an assurance for all indebted person commitment.

Along with guarantees, there are debts and credit obligations in bankruptcy, as well as the period, is given by the creditor to the debtor. Both debtors and creditors can file for bankruptcy at the Commercial Court if the debtor cannot fulfill his obligations based on the agreed time and is no longer able to do so.[4] Bankruptcy can be interpreted as a state of stopping payments.[5] On the other hand, liquidation is a court choice that causes general seizure of all resources of the bankrupt debt holder, both existing and future. The fundamental goal of overseeing and settling chapter 11 is to utilize the returns from the offer of these resources for pay all obligations of the bankrupt debt holder relatively (*pari passu prorata parte*) and by the loan boss construction. It is finished by the guardian under the management of the administrative appointed authority.[6]

As a rule, chapter 11 regulation is expected for borrowers who can't pay their obligations or as such are in a terrible monetary condition (wiped out). With the institution of this liquidation rule, the state is attempting to give an exit plan to borrowers who are encountering monetary troubles (monetary challenges) so they can make obligation installments, regardless of whether they are not paid off. [7]

Henry Campbell Black in Black's Law Dictionary writes the definition of bankruptcy law, namely:[8]

"The debtor is released from all responsibilities under the bankruptcy law, which is a general legal provision, at the time of handing over his assets and assets to pay off his debts and with the approval of the creditors with a certain percentage."

From a business perspective, bankruptcy is the worsening financial status of an organization, which can negatively affect performance for a time. Businesses eventually run out of funding options.[9]

According to the definition of bankruptcy which requires general confiscation of all the debtor's assets, all assets currently owned by the bankrupt debtor will be taken during the bankruptcy process. All wealth will be collected and managed by the appointed party, namely the caretaker under the management of the Administrative Adjudicator. The debtor's assets include domestic and foreign assets that will be used by creditors to pay off outstanding debts.[4]

Article 21 of Regulation Number 37 of 2004 concerning Insolvency and Suspension of Commitments for Installment of Obligation (hereinafter alluded to as UUK-PKPU) directs:

"Bankruptcy includes all of the debtor's assets at the time the bankruptcy statement decision was pronounced as well as everything that was obtained during the bankruptcy"

Based on these provisions, it can be interpreted that all the assets of a bankrupt debtor, both at home and abroad, are included in the bankrupt debtor and can be executed. However, in cases of cross-border insolvency, there are several obstacles in executing bankruptcy companies that are outside the jurisdiction of Indonesia. This is because Indonesia adheres to the Territorial Principle following Article 436 Reglement op de Burgerlijke Rechtvordering (Rv), which means that decisions from foreign courts cannot be used in Indonesia, which has the opposite legal effect, namely Indonesian court decisions have no legal force in other countries, and the principle of Sovereignty of other countries which conflicts with the essence of bankruptcy which covers all debtor's assets as stated in Article 21 UUK-PKPU.

UUK-PKPU manages worldwide legitimate arrangements with respect to chapter 11 framed in Articles 212 to 214 however doesn't control rules for the execution of the execution of bankrupt account holder resources that are outside the locale of Indonesia. Another problem

that arose later was that Indonesia was not bound by an international agreement related to cross-border insolvency so the bankruptcy decision handed down by the Indonesian Commercial Court did not have executive power outside Indonesia's jurisdiction.

The rise of bankruptcy cases in Indonesia, moreover these cases involve other countries where the bankruptcy assets are abroad, this is the point of difficult for the court to take steps to execute the debtor's assets. This condition prevents the settlement of bankrupt debtors who are abroad and unable to optimize bankrupt assets to pay creditors.

2. Method

The research conducted belongs to the type of normative legal research. This type of legal research refers to normative or statutory provisions regarding the General Confiscation of Bankrupt Debtor's Assets Outside the Indonesian Jurisdiction Area. Standardizing research gives a deliberate clarification of the guidelines overseeing a specific legitimate classification, investigates the connections between guidelines, portrays areas of trouble, and conceivably predicts future development.[10] The exploration covers lawful standards, legitimate history, and lawful correlations.[11] This exploration was directed by inspecting library materials comprising of essential legitimate materials and optional lawful materials to get data pertinent to this examination.

In regulating lawful exploration, essential, auxiliary, and non-legitimate lawful materials are gathered and examined to acquire ends. The legal material analyzed is in the form of laws and regulations by examining cross-border bankruptcy which will then be interpreted through UUK-PKPU, theories, and opinions from several related experts as primary and secondary legal materials. The analysis is then presented in a prescriptive form by explaining, establishing, and providing arguments so we can conclude the legal issues raised.

3. Result and Discussion

3.1 Process in Determining Bankruptcy Applications by Judges

The meaning of chapter 11 is an overall seizure of the relative multitude of resources of a Bankrupt Debt holder or by another name a borrower who has been pronounced bankrupt by a Court choice whose administration is done by the Guardian under the oversight of the Administrative Adjudicator as specified in Regulation Number 37 of 2004 concerning Liquidation and Delay of Obligation Installment Commitments (PKPU). The meaning of a guardian is a home or an individual selected by the court to control and discard the resources of a bankrupt borrower under the oversight of an administrative appointed authority by Regulation Number 37 of 2004. For terms and decisions for liquidation, it is contained in article 2 of regulation no. 37 of 2004 specifically:

- a. A debt holder who has at least two lenders and doesn't take care of something like one obligation that is expected and payable is proclaimed bankrupt by a court choice, either at his solicitation or in line with at least one of his loan bosses.
- b. The application as alluded to in passage (1) may likewise be presented by the public examiner's office in the public interest.

- c. If the Debt holder is a bank, the application for a statement of liquidation must be presented by Bank Indonesia.
- d. If the Debt holder is a Protections Organization, Stock Trade, Clearing Assurance Establishment, Storehouse, and Repayment Foundation, a statement of liquidation must be put together by the Capital Market Administrative Organization.
- e. If the Borrower is an Insurance Agency, Reinsurance Organization, Annuity Asset, or a State-Possessed Venture working in the public premium, an announcement of liquidation must be put together by the Priest of Money.

As for the application contained in article 6 of Law Number 37 of 2004, namely:

- a. An application for a statement of liquidation is submitted to the Central Equity.
- b. The Enlistment center registers the application for a statement of liquidation on the date the application being referred to is recorded, and the candidate is given a composed receipt endorsed by the approved official on a similar date as the date of enrollment.
- c. The Enlistment center is obliged to deny the enrollment of the application for a statement of liquidation for the organization as alluded to in Article 2 section (3), passage (4), and section (5) in the event that it is done not by the arrangements in those passages.
- d. The Enlistment center presents a solicitation for a statement of liquidation to the Central Equity no later than 2 (two) days after the date the application is enrolled.
- e. Within a time of no later than 3 (three) days after the date the application for a statement of insolvency was enlisted, the Court will concentrate on the application and set a conference day. - An assessment hearing on the application for a statement of chapter 11 is held no later than 20 (twenty) days after the date the application is enlisted. - in line with the Borrower and in view of adequate reasons, the Court might defer the holding of the preliminary as alluded to in passage (5) until some other time than 25 (25) days after the date the application was enrolled.

The parties to the bankruptcy dispute are the parties who apply for bankruptcy. Receiving, examining, and making decisions on cases submitted by applicants in bankruptcy cases is the responsibility of the court itself. In terms of content specifications, the parties submit. According to the Bankruptcy Law Number 37 of 2004 concerning Bankruptcy and Suspension of Obligations for Payment of Debt, one of the ways to bring it to court is through procedural or substantive law (PKPU). If it is not regulated there, the court will rely on civil procedural law as its legal basis. One of the requirements for filing a bankruptcy petition is that the applicant must show a legal relationship with the respondent, including by providing evidence of accounts receivable or a debt acknowledgment agreement, and must have a PKPU or bankruptcy certificate. Such an application or lawsuit is useless if there is no legal relationship then it cannot be pursued.

Some requirements must be met to apply for bankruptcy so that the application can be processed and decided later. The process of filing for bankruptcy includes fulfilling the requirements for filing for bankruptcy. The Bankruptcy Code specifically addresses the requirements for filing bankruptcy. According to Article 2 of the Bankruptcy Law, before a company can apply for bankruptcy, the conditions for bankruptcy must be met. The prerequisite

is the presence of debt, at least one of which is due and collectible. In the application for a chapter 11 proclamation, the borrower, at least two lenders, a liquidation explanation from the Business Court, and the debt holder are likewise present.

To obtain a bankruptcy statement from the Commercial Court, there is also a bankruptcy filing procedure that must be followed. The filing procedure itself is regulated in Law Number 37 of 2004 which discusses Bankruptcy. The following procedures must be followed to obtain a bankruptcy statement from the Commercial Court, namely as follows:[12]

- a. Court submissions
Submission of a bankruptcy application to the Chief Justice through the Registrar. in this case Appoint a Curator Licensed Advocate
- b. Submission of a Bankruptcy Application Statement
The Enlistment center presents a solicitation for a statement of insolvency to the Main Equity no later than 2 (two) days after the date the application is enrolled. The preliminary date not entirely set in stone inside 3 (three) days from the date the application is enrolled.
- c. Bankruptcy Application Assessment Meeting
The assessment hearing will be held inside a time of no later than 20 days after the date the application is enrolled.
- d. Summons of Debtors by Court
In the event that a liquidation request is recorded by a lender, the Principal legal officer, Bank Indonesia, the Capital Market Authority, or the Pastor of Money, the borrower should be called to court.
- e. Call of K Creditor
the manager can be called by the court assuming an insolvency explanation is recorded by the indebted person and there are likewise questions about the chapter 11 necessities that should be met.
- f. Calling Debtors and Creditors with Express Letters
The solicitation of the borrower or credit manager will be finished by a bailiff by express letter, something like 7 days before the primary starter is held.
- g. Court Decision Regarding Bankruptcy
A court choice on an insolvency request should be conceded assuming there are demonstrated realities that the liquidation necessities are satisfied. The choice should be articulated no later than 60 days subsequent to being enrolled.
- h. Verdict Reading
The legitimate contemplations basic the choice on the application for liquidation announcement should be contained in full in it. The choice must likewise contain the assessment of the Board of Judges, which should be articulated in a conference open to general society and can be carried out ahead of time, regardless of whether there is a lawful solution for the choice.

In the process of determining bankruptcy, various stages must be passed by each party with the following description:

- a. The applicant party as the registrant of the report is required to register and attach personal identity in the form of an Identity Card (KTP) as well as a power of attorney registered and the evidence submitted and attached to the One Stop Integrated Services (PTSP) section.

- b. After the applicant has registered the report and it has been declared complete by the One Stop Service (PTSP), an official report on receipt of the return application is made.
- c. After the minutes are completed, they will proceed to the Registrar and set up to the Chairman. Later the Chairperson will determine the panel that will preside over the trial on the decision.
- d. In the process of filing for bankruptcy, the applicant must wait for the file verification process with an estimate of no more than one working day, and the first trial schedule will start 7 (seven) days from the date of registration of the applicant. Meanwhile, calls to both parties are made by registered letter. Call centers in ordinary civil cases for both parties are delivered directly to both parties, while bankruptcy cases are submitted via postal services.
- e. The process of determining a bankruptcy application is limited by law, where in article 8 passage 5 which expresses that the Court's choice on an application for a liquidation explanation should be articulated no later than 60 (sixty) days after the date the application for a chapter 11 proclamation was enlisted. On the off chance that the Deferment of Obligation Installment Commitments (PKPU) will be resolved no later than 40 days. So that in light of this cutoff time, the get together should change the time so a choice can be given on schedule. For the actual choice can be given before the assessed time set however may not surpass that time.

It needs to be underlined that bankruptcy and Suspension of Obligations for Payment of Debt are two different things. Bankruptcy may be more widely known among the public, but it is different from Suspension of Debt Payment Obligations (PKPU), there are still many people who question what PKPU is even though these two things are related and are in the same Law Number 37 of 2004 concerning Bankruptcy and Suspension of Debt Payment Obligations. Bankruptcy is a condition where a debtor is unable to pay debts past their maturity. Bankruptcy is very different from bankruptcy, bankruptcy is a state of loss even though you have no debt. Whereas PKPU is a peace effort offered by the debtor to settle these debts so that they are not declared bankrupt.

In view of Article 1 point 1 of Regulation no. 37 of 2004 concerning Liquidation and Suspension of Commitments for Installment of Obligation, insolvency is an overall seizure of all resources of a Bankrupt Debt holder whose administration and repayment are completed by the Caretaker under the oversight of the Administrative Appointed authority. While PKPU itself is not defined by Bankruptcy Law. However, from the regulatory formulation regarding PKPU in Bankruptcy Law, we can see that PKPU is a technique utilized by indebted individuals and banks in the event that the debt holder or leaser surveys that the borrower can't or is supposed to at this point not have the option to keep paying his obligations that have fallen due. time and collectible, to arrive at a repayment plan (counting a proposal to pay part or all the obligation to lenders) between the indebted person and the leaser so the debt holder doesn't have to fail. In view of the comprehension of liquidation and PKPU above, we can presume that in chapter 11, the account holder's resources will be utilized to pay all his matched obligations, while, in PKPU, the borrower's resources will be overseen so they produce and can be utilized to take care of the debt holder's obligations.

3.2 The Concept of Transnational Bankruptcy in Bankruptcy and Suspension of Obligations to Pay Debts

Bankruptcy arrangements in Indonesia are regulated in several laws and regulations, namely: Regulation Number 37 of 2004 concerning Insolvency and Suspension of

Commitments for Obligation Installment, Regulation Number 40 of 2007 concerning Restricted Responsibility Organizations, and Burgerlijk Wetboek (BW).

Liquidation depends on the arrangements of Article 1 number 1 UUK-PKPU, in particular the fall of a court choice on a bankrupt borrower bringing about an overall law of seizure of the relative multitude of bankrupt debt holder's resources, both existing and new ones that will exist from here on out, which the board and repayment are done by the custodian under oversight directing adjudicator. As to thought of general seizure, there is no standard definition in legal guidelines. In any case, it very well may be deciphered that overall seizure is the taking over of the account holder's all's resources, both existing and new ones that will exist from now on, expecting to be utilized as security for reimbursement of the bankrupt debt holder's obligations to his lenders, by Article 1131 BW which specifies that: "All resources of the borrower, both portable and unflinching, both existing and new, will exist from now on. Turn into an assurance for all borrower commitment.

The increasingly massive free trade has an impact on the inevitability of business contracts between debtors and creditors from different jurisdictions so that when bankruptcy occurs it is known as cross-border insolvency. Cross-line liquidation is characterized as chapter 11 emerging from a global deal that contains components of unfamiliar business entertainers who don't start from the nation where the insolvency interaction is completed.[6]

Article 21 UUK-PKPU specifies that liquidation incorporates every one of the account holder's resources at the time the insolvency choice was articulated as well as all that was acquired during the chapter 11. As per Saifudin Zuhri, every one of the resources of a bankrupt borrower, both within and outside the jurisdiction of Indonesia, are included in the bankrupt debtor and can be executed. Where the debtor's assets are located abroad is also included in the bankrupt model. However, regarding the assets of bankrupt debtors located in different jurisdictions, there has not been further regulation regarding the execution method in the UUK-PKPU. This is because when the UUK-PKPU was formed, the law drafting team failed to predict that a set of rules related to cross-border bankruptcy was needed because creditors and/or bankrupt assets could be outside the jurisdiction of Indonesia. Even though it is not regulated further, the UUK-PKPU regulates the provisions of international law regarding bankruptcy.[13]

The provisions of international law regarding bankruptcy are regulated in Article 212 UUK-PKPU which explains the prohibition of unilateral execution by creditors in the form of taking the bankrupt debtor's assets abroad with or without permission from the curator. Furthermore, Article 213 of the UUK-PKPU regulates the prohibition of transferring the receivables to other parties or in other words there is a change of creditors (subrogation), and finally, Article 214 of the UUKPKPU regulates the prohibition of transferring these receivables to third parties resulting in debt settlements abroad (set off). If the prohibition is carried out, then it is obligatory to replace the bankrupt assets in the amount that has been obtained. The contents of the article by article are as follows:

Article 212

"A creditor who, after the pronouncement of the bankruptcy declaration, takes full or part of his receivables from objects including bankruptcy assets located outside the territory of the Republic of Indonesia, which are not attached to him with the right to take precedence, is obliged to replace all that he has acquired with the bankruptcy assets."

Article 213

"(1) Creditors who transfer all or part of their receivables from Bankrupt Debtors to third parties, with the intention that third parties take precedence over other people for all or part of their receivables from objects including bankruptcy assets located outside the territory of the Republic of Indonesia, obligated to replace the bankrupt assets that have

been obtained. (2) Unless proven otherwise, any transfer of receivables must be deemed to have been carried out by the provisions referred to in paragraph (1), if the transfer is carried out by the Creditor and the Creditor knows that a declaration of bankruptcy has been or will be filed."

Article 214

"(1) Any person who transfers all or part of his receivables or debts to a third party, who therefore has the opportunity to set off debts outside the territory of the Republic of Indonesia which is not permitted by this Law, is obliged to reimburse him for bankruptcy assets. (2) The provisions of Article 213 paragraph (2) also apply to matters as referred to in paragraph (1)."

It is further explained that Article 212 of the UUK-PKPU only applies if it fulfills the following conditions:[9]

- a. The debtor is declared bankrupt in Indonesia by an Indonesian court, namely the Commercial Court;
- b. The creditor has taken payment for his receivables from the debtor's (proceeds from the sale of) goods belonging to the debtor, both for the whole or for a part of his receivables;
- c. Goods belonging to the debtor are outside the territory of Indonesia (overseas);
- d. The creditor is not a preferred creditor for the goods belonging to the debtor, or in other words, the creditor is not the holder of collateral rights to the goods belonging to the debtor who is abroad.

From the word "take" contained in Article 212 UUKPKPU, the act of taking payment from the proceeds from the sale of goods by a bankrupt debtor who is outside the jurisdiction of Indonesia must be a unilateral action on the part of the creditor himself. This means that the action is without the permission of the Curator. Regarding if the creditor's actions have received permission from the Curator and/or the Supervisory Judge then this has not been regulated in UUK-PKPU.[9]

Article 213 paragraph (1) UUK-PKPU can only be enforced if the following conditions are met:

- a. Article 213 paragraph (1) UUK-PKPU is still related to Article 212 UUK-PKPU, therefore, Article 213 paragraph (1) concerns a bankrupt debtor who is declared bankrupt by an Indonesian court;
- b. Creditors move or transfer their bills to other parties, in other words, there has been a change of creditors (subrogation);
- c. The party taking settlement of the bill is the new creditor;
- d. The repayment is taken by the new creditor from the sale of goods belonging to the debtor who is outside the territory of Indonesia;
- e. The takeover of the settlement of bills by the new creditor is carried out by the creditor himself. It means that the repayment was not authorized by the curator and was made regardless of the bankruptcy process as stipulated in Indonesian bankruptcy law or UUK-PKPU.

Furthermore, Article 213 paragraph (2) UUK-PKPU cannot be interpreted separately from Article 213 paragraph (1) UUK-PKPU, which means that Article 213 paragraph (2) is only valid as long as it fulfills the elements in Article 213 paragraph (1) UUK -PKPU, apart from what has been mentioned above, there is one element regarding the application of Article 213 paragraph

(2), namely the creditor who transferred the receivables knows that the debtor has filed a bankruptcy application or is about to submit a bankruptcy declaration.

Furthermore, regarding the implementation of Article 214 paragraph (1) UUK-PKPU the following conditions must be met:

- a. The debtor is declared bankrupt by an Indonesian court;
- b. There is a transfer of both the transfer of receivables and the transfer of debt;
- c. As a result of transferring bills or transferring debt, it is possible for a settlement of debt or compensation for debts to occur between parties who transfer each other;
- d. The compensation must be between a receivable or debt, one of which (either the receivable or the debt) is outside Indonesia.

Furthermore, Article 214 paragraph (2) UUK-PKPU stipulates that the transfer of receivables and transfer of debt is prohibited in bankruptcy provisions in Indonesia, so if this occurs, Article 213 paragraph (2) UUK-PKPU applies, which means that the parties, in this case, transfer of debt or transfer of receivables is required to be able to prove the reverse.

based on the matters described above that cross-border insolvency has not been regulated concretely in UUK-PKPU even though there are international legal provisions regarding bankruptcy in Articles 213 to 214 UUK-PKPU, but an article by This article does not explain cross-border insolvency and only discusses the rights to collect on the assets of a bankrupt debtor that is outside the jurisdiction of Indonesia and the obligations of creditors or debtors to make compensation if they take actions that harm assets. bankrupt.

Based on the foregoing, it can be said that the UUK-PKPU adheres to the principle of territoriality in which bankruptcy decisions in Indonesia only apply to bankruptcy assets located in Indonesia, and automatically cannot execute in other jurisdictions because of the separate bankruptcy regulations each has. each country. Even so, bankrupt assets that are outside must still be included in the list of assets of the bankrupt debtor and if the assets are transferred by a creditor or debtor, then the results of the transaction must be taken care of by the management who will distribute the results of the transfer of these assets for all creditors' receivables unless there is the right to give priority to creditors for bankrupt assets that are abroad.[14] The principle of *lex rei sitae* (*lex site*) applies to the assets of a bankrupt debtor who is outside the jurisdiction of Indonesia, which means that any case involving immovable objects is subject to the law of where the object is located.

4. Closing

The candidate presents a chapter 11 application to the Central Equity of the High Court through the Recorder, for this situation by delegating a Supporter with a Keeper permit, so the Main Equity of the High Court settles on the liquidation application by the adjudicator in court. Besides, no later than two days after the application is enrolled, the Enlistment center will send a solicitation for a statement of insolvency to the Main Equity of the High Court. After the Head of Objectation gives his endorsement, the assessment hearing will be held no later than 20 days from the date of enlistment of the application. The board of judges will settle on the liquidation application after the assessment meeting. Assuming there is proof that the chapter 11 prerequisites have been met, the liquidation application should be supported. The choice should be articulated no later than 60 days subsequent to being enlisted.

The panel of judges must consider legal, philosophical, and social correctness when deciding whether to grant a request for bankruptcy in court. The judge's decision must be

supported by witness testimony, evidence, the statement of the defendant and the applicant, documentary evidence, facts revealed in the trial, and elements of carelessness put forward against the respondent. because the facts presented in court supported the decision that had been made. In addition, the judge's decision to impose sanctions on the applicant or respondent must be supported both by the evidence presented at trial and expert testimony.

It is good for people if they want to do corporation, they have to think long and make more mature preparations. So that during the business, it does not cause problems in the future and does not harm any party.

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