Disparity in Judge Decisions in Resolving Rad Inheritance Disputes: Case Study at the Sharia Court in Banda Aceh City

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Abstrak

Two contrasting viewpoints emerge over the issue of rad inheritance, notably concerning the events at the Syar'iyah Court. One viewpoint granted Baitul Mal the remaining inheritance, while the other viewpoint maintained that the heirs were entitled to reclaim their remaining assets. This study aims to identify the key elements considered by the justices of the Aceh Syar'iyah Court and the Banda Aceh Syar'iyah Court while making their verdicts in this case, as well as how Islamic law assesses the resolution of inheritance disputes related to property rights. This study scrutinizes the empirical legal research methodologies employed by analyzing them from the perspective of Islamic legal theory. The data is collected by conducting interviews and accessing material in libraries. The findings indicate that the Banda Aceh Sharia Court's Panel of Judges awarded the remaining inheritance to Baitul Mal, in accordance with the book Hasyiyah al-Bajuri, Qanun Number 11 of 2002, and Article 11 paragraph (1), and Article 14 of Aceh Qanun Number 7 of 2004, which pertain to the implementation of Islamic Sharia in the fields of Aqidah, Worship, and Islamic Sharia, and Zakat Management, respectively. Per Article 193 KHI, the justices of the Aceh Syari'yah Court hold a differing opinion regarding the distribution of any leftover inheritance to the heirs of the zawil furudh. According to Islamic family law, Zaid bin Thabit and a few Malikiyah and Syafi’iyah jurists endorse the choice of Baitul Mal to accept the remaining bequest. Furthermore, Uthman bin Affan's viewpoint about the application of rad, which includes marital relations, asserts that all furudh heirs possess the right to rad. This stance is also backed by the ruling of the Panel of Judges of the Aceh Syar’iyah Court.

Keywords: Disparity, judge's decision, radical inheritance, Islamic family law
**Abstrak**


**Kata Kunci:** Disparitas, putusan hakim, kewarisan rad, hukum keluarga Islam

**Introduction**

In Indonesia, inheritance problems hold substantial importance in both Islamic family law and Islamic law. The significance of inheritance is such that it is extensively addressed in all state legal rules and Islamic jurisprudence literature. Both the Islamic Law Compilation and the Marriage Law provide evidence of this. The legal regulations delineate the prerequisites and factors to be taken into account for judges serving in Indonesia's religious courts.¹

The evolving cultures and practices of Indonesian societies also influence historic artifacts. Therefore, it is apparent that culture and norms exert the most

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significant impact on the distribution of inheritance. This is observable in diverse cultural contexts such as Aceh, Minangkabau, Banjar, Javanese, Bugis, and Mandar. The division of inheritance, whether in the formal legal system or the customary system, nevertheless prioritizes Islamic legal rules.\(^2\) \textit{Rad} inheritance, also known as residual inheritance, is a method of distributing inherited assets when there is an insufficient number of heirs to split the original portion equally.

Disputes often arise on matters that are resolved by the Religious Courts. Concerning the matter of inheritance in Indonesia, Article 193 of the Compilation of Islamic Law provides a potential solution as a guiding principle: The inheritance is distributed in a proportional manner, based on the rights of each heir. If the distribution among the heirs of \textit{Dzawil Furud} shows that the numerator is smaller than the denominator, and there are no heirs to the ashabah, the remaining portion is divided equally among them. As to the Guidelines for the Implementation of Duties and Administration of Religious Courts, the procedure for distributing remaining assets does not extend to individuals who have lost their spouse. Article 193 of the KHI includes the principle of equitable justice, which necessitates a fair distribution of rights and responsibilities, adjustments to the allocation of inherited assets, and the return of any surplus assets to the current heirs, proportionate to their respective shares.\(^3\)

Article 193 of the KHI (Islamic Law Compilation) should be used as a primary legal source by judges in the \textit{Syar'iyyah} Court when making decisions related to the division of inheritance. Practically, there is a discrepancy between the decision made by a judge of the Banda Aceh \textit{Syar'iyyah} Court regarding the distribution of inheritance assets and the provisions stated in this article. This discrepancy is evident in decision Number 223/Pdt.G/2017/Ms.Bna, where the Panel of Judges responsible for handling cases of inheritance asset distribution acted contrary to the provisions. The ruling states that H bin MA, the spouse of the heir, was granted 25\% of the property, while MJ bint H, the biological daughter of the deceased, was granted either 50\% or 50\% of the inheritance, leaving the remaining 25\% to the testator. The heritage was bestowed upon the Baitul Mal Banda Aceh institution.\(^4\)

Furthermore, discrepancies in the protocols for settling \textit{rad} cases were identified in decision No.52/Pdt.G/2018/MS.Aceh, which is an appellate ruling based on decision No. 223/Pdt.G/2017/Ms.Bna. The appellate judges determined that the remaining 1/4 of the inheritance was divided among the present heirs, which includes the husband (widower). Widowers do not have the right to the


\(^3\) Muhammad Daud Ali, \textit{Hukum Islam dan Peradilan Agama (Kumpulan Tulisan)}, (Jakarta: Raja Grafindo Persada, 2002), p. 129.

\(^4\) The decision of the \textit{Syari'yah} Court of Banda Aceh No.223/Pdt.G/ 2017/MS.Bna.
remaining assets as per the stipulations outlined in the Guidelines for the Implementation of Duties and Administration of Religious Courts.

The consequences of these two choices will undoubtedly provoke a discussion, as the assets that were supposed to be given to the rightful heirs, specifically the daughters as stated in Article 193 KHI, will instead be allocated to the Baitul Mal institution in the initial decision and to the husband (widower) in the subsequent decision. In this scenario, the appeal pertains to a party who is not the rightful successor. The provisions stipulate that the judge can only transfer control of the inherited assets to Baitul Mal if there is no rightful party entitled to the assets, as stated in Article 191 KHI. This article specifies that if the heir has no heirs or if the heirs do not exist, control of the assets is transferred to Baitul Mal for religious purposes and general welfare.

In order to ensure legal certainty regarding the allocation of remuneration, it is imperative to conduct further research on the subject, taking into account the provisions of Article 193 KHI and the Guidebook for the Implementation of Duties and Administration of Religious Courts. These regulations govern the technical division of inheritance assets classified as rad cases and address the potential for disputes to arise between the parties.

This paper will provide research findings on the Disparity of Judges' Decisions in Rad Dispute Resolution that occurred in the Banda Aceh Court and Aceh Province. This study uses empirical legal research methods analyzed with Islamic legal theory, literature data collection techniques through interviews and documentation.

**Rad Concept in the Islamic Law**

Linguistically, ar-radd indicates to turn aside or backward. The phrase describes it as a decrease in the problem's original source and a rise in the number of ashabul furudh portions. Stated differently, rad arises when the number of heirs from the problem's origin is insufficient, or when the number of heirs' shares is less than the problem's origin. Rad happens when the following three conditions are met:

- a. There is ashabul furudh
- b. There is excess inheritance after being distributed to each ashabul furudh
- c. There are no heirs to the ashabah

Rad will not occur unless these three pillars are met. For example, if the heirs are all ashabah or numerous ashabul furudh and one ashabah, the inheritance will be lost or reduced. Similarly, if the number of shares (shares) of the successors is the same as the initial number of problems, with no excess, there will be no rad problems.

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Except for husband and wife, Rad can arise and involve any ashabul furudh. There are just eight ashabul furudh who can receive rad. These are:

- a. Girl (daughter)
- b. A granddaughter descended from a son
- c. Biological sister
- d. Father's half-sister
- e. Biological mother
- f. Sahih grandmother (father's mother)
- g. Mother’s sister
- h. Mother's brother

Even if both fathers and grandfathers are ashabul furudh under some circumstances, they cannot acquire rad. In any case, if one of them is included in the allocation of inheritance rights, there cannot be rad because both will get inheritance as ashabah.

The Judge's Basic Considerations in the Rad Inheritance (a Case at the Banda Aceh City Syar'iyyah Court)

In decision no. 223/Pdt.G/2017/MS.Bna, dated September 11, 2017, the plaintiff, who is the husband of the deceased heir, initiated a legal action at the Banda Aceh Syari'yah Court. The purpose of the lawsuit is to divide the inheritance assets that were left behind by the deceased heir (his wife), which have been unilaterally controlled by the defendant (his biological daughter). Consequently, the plaintiff requested the distribution of the inherited assets (faraid) to the rightful heirs, including both the plaintiff and the defendant, in accordance with the current laws.

In this decision the Panel of Judges determined the share of each heir as follows:

1. H bin MA (husband/plaintiff) received 1/4 (a quarter) share
2. MJ bint H (daughter/defendant) gets 1/2 (half) share or is the origin of problem four so she gets 2/4
3. The remaining 1/4 (quarter) part is the right of Baitul Mal, due to the absence of ashabah either by lineage or freeing/slaves (wala’)

This decision is based on several factors, including the fact that the heir’s remaining assets are not completely distributed to the zawil furudh and there are no ashabah, or because wala’ is based on the syara’ argument as stated in the book of Hasyiyah al-Bajuri, juz II, page 75, which states:

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\text{فإن لم يوجد للميت عصبة با لنسب و لا عصبة با لولاء فماله لبيت المال}
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10The decision of the Syari’yah court of Banda Aceh No.223/Pdt.G/ 2017/MS.Bna.
It means: *If the heir lacks a ‘ashabah (who can dispose of all assets), either due to family connections or because of wala’ (freeing slaves), his possessions are given to Baitul Mal.*

The transfer of the remaining assets to Baitul Mal is in accordance with Qanun Number 11 of 2002, which pertains to the implementation of Islamic Shari'ah in the areas of Aqidah, Worship, and Islamic Shari'ah. This transfer is also aligned with Article 11, paragraph (1), and Article 14 of Aceh Qanun Number 7 of 2004, which specifically addresses the management of zakat. According to these regulations, the Baitul Mal Agency is a regional institution with the authority to manage zakat, infaq, and other religious assets in the Province of Nanggroe Aceh Darussalam. Considering that this aligns with the requirements and implementation of the Islamic Shari'ah in Aceh, which has been progressing smoothly, the transfer of the remaining assets to Baitul Mal is also approved. The Baitul Mal Agency is tasked with the development of mustahiq and muzakki, the management of zakat, and the empowerment of religious assets in accordance with Islamic law.

From the judge’s views, it may be inferred that it is possible to allocate the remaining bequest to Baitul Mal, as long as the management of religious assets in Baitul Mal is efficiently structured, methodical, and supervised by a reliable and impartial amil. If these criteria are not fulfilled, the remaining assets are distributed to the rightful heirs, excluding the husband and wife, who have no direct relation to the person who made the will.\(^\text{11}\)

Nevertheless, in the appeal case number 52/Pdt.G/2018/Ms. Aceh, the Aceh Syari’yah Court Panel of Judges expressed disagreement with the legal rationale of the Banda Aceh Syari’yah Court Panel of Judges, who awarded the surplus portion of the inheritance to Baitul Mal. According to Article 193, the Compilation of Islamic Law, any remaining inheritance is distributed among the zawil furudh heirs, which in this case are the husband (plaintiff/appellee) and the daughter (defendant/appellant). Their portions are distributed based on their shares, resulting in the reduction from eight to six. Therefore, the husband receives a 33.3% share (2/6) and the daughter receives a 66.7% share (4/6) of the inheritance.\(^\text{12}\)

The two rulings differ in their approach to dividing the residual inheritance due to variances in the underlying legal factors considered. The panel of judges at the Aceh Syari’yah Court relied on Article 193, the Compilation of Islamic Law to make legal decisions about the distribution of the remaining inheritance. Meanwhile, the panel of judges at the Banda Aceh Syari’yah Court resorted to the book Hasyiyah al-Bajuri. Both opinions carry equal legal weight due to the fact that a religious court judge is not only bound by the rules of the Compilation of Islamic Law when rendering decisions in inheritance issues. Compilation of Islamic Law, or the Kitab al-Hujjah al-Islamiyyah, is merely one of the foundational principles of


\(^{12}\) Decision of the Syari’yah Court of Aceh No. 52/Pdt.G/2018/Ms.Aceh.

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Islamic jurisprudence. It is important to note that there exist additional authoritative texts on Islamic legal rulings, known as fiqh.\textsuperscript{13}

However, some courts argue that individuals other than the husband and wife, known as zawil furudh heirs, should be entitled to receive the remaining inherited assets. This means that the allocation of these assets varies not only for Baitul Mal or zawil furudh heirs, including spouses. This perspective aligns with the Guidelines for the Execution of Duties and Management of Religious Courts, which explicitly state "rad." The concept of Rad does not pertain to widows and widowers when the heirs are limited to zawil furudh and the number of shares inherited is less than 1 (one).\textsuperscript{14}

The Panel of Judges, being independent and impervious to external influence, possess the exclusive authority to apply fundamental legal principles in a case. This encompasses the utilization of the Compilation of Islamic Law, the Guidelines for the Implementation of Duties and Administration of Religious Courts, or other books related to Islamic jurisprudence (fiqh). The concept of a judge's freedom is based on Article 24, paragraph (1) of the 1945 Constitution, which states that "judicial power is an independent power responsible for administering justice and upholding the law and justice."

Independent judicial power, also referred to as judge independence, denotes the capacity of judicial institutions to render impartial and unbiased rulings. A judge must exhibit impartiality and refrain from favoring any party involved in a litigation or disagreement when issuing a ruling. An impartial ruling is characterized by the judge's lack of bias towards any party involved and the absence of any perception of unfairness among the parties. To render an objective decision, the judge must take an honest position and rely on widely accepted objective measures or criteria (conditions/circumstances in society).\textsuperscript{15}

The author's analysis indicates that the lack of a binding rule pertaining to radical inheritance—such as Law Number 1 of 1974 concerning marriage, which serves as a guide for judges in religious courts when resolving marriage-related cases—is what leads to differences in legal considerations when deciding this case. One of the regulations controlling rad is the Compilation of Islamic Law; according to Article 7 paragraph (1) of Law Number 12 of 2011 concerning Formation of Legislative Regulations, the Compilation of Islamic Law's authority is restricted to Presidential Instructions (Presidential Instructions) and is not included in Indonesia's hierarchy of laws and regulations.

The Republic of Indonesia's 1945 Constitution, the People's Consultative Assembly Decree (TAP MPR), Laws and Government Regulations in Lieu of Law, the Government Regulations, Presidential Regulations, Provincial Regional

\textsuperscript{13} Interview with Yusri, the judge at the Syari'yah Court of Banda Aceh, November 13, 2020.

\textsuperscript{14} Interview with Abu Bakar Ubit, Judge of the Syari'yah Court Banda Aceh, 13 November 2020.


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Regulations, and Regency/City Regional Regulations make up the types and hierarchy of Legislative Regulations. Because Presidential Instructions are not included in Article 7 Paragraph (1) of Law Number 12 of 2011 about the Formation of Legislative Regulations, it is evident from the aforementioned article that the Compilation of Islamic Law is not included in the legal hierarchy or order of laws and regulations in Indonesia. Thus, the Compilation of Islamic Law is merely a proposal from the Minister of Religion, who executes the President's orders to be applied in all Indonesian Religious Courts, rather than a legally binding norm.

The goal of the Compilation of Islamic Law is actually quite beneficial; it is to create unified standards for judges of Religious Courts and to make it a law that all Muslims in Indonesia must abide by. As a result, decisions made by Religious Courts will no longer be unclear. This goal, however, cannot be achieved in practice because the Compilation of Islamic Law is merely a recommendation that need not be followed. Instead, judges at Religious Courts base their decisions not only on the Compilation of Islamic Law but also on references to previous jurists' fiqh books, which they consult depending on the circumstances of each case. As a result, judges often reach different conclusions while trying to resolve the same cases.

Islamic Law Review of Rad Inheritance Settlement in the Judge's Decision at the Banda Aceh City Sharia Court

In decision no. 223/Pdt.G/2017/MS.Bna, the judge ruled that the daughter of the heir would get 50% of the estate, the heir's spouse would acquire 25% of the estate, and Baitul Mal Banda Aceh City would inherit the remaining 25%. This decision aligns with the perspectives of Zaid bin Thabit and specific scholars from the Syafi'iyah and Malikiyah schools, who argue that Baitul Mal should receive the entire inheritance rather than people receiving a predetermined share.

Zaid bin Thabit's reasons for rejecting rad were:¹⁶

1. It is unnecessary to modify the obligatory share of the inheritors of Zawil Furudh Qath'y since Allah SWT has already established it. Adding fardh for the heirs of zawil furudh refers to making provisions that go beyond the limits set by Shari'ah law. This is an evil deed, according to Allah SWT:

   Meaning: And Allah will undoubtedly cast whoever disobeys Him and His Messenger and disobeys His commands into the flames of hell, where he will spend eternity in agonizing agony.

2. After concluding the revelation of the inheritance verse, Rasulullah SAW strengthened the word of Allah regarding the fardh-fardh of heirs.

¹⁶ Khairuddin and Zakiul Fuadi, Belajar Praktis Fikih Mawaris (Banda Aceh; UIN Ar-Raniry, 2014), p. 41-42
In order to ensure that all furudh heirs have the right to rad, the Panel of Judges at the Aceh Sharia Court upholds Uthman bin Affan's assertion that the return known as rad also applies to marital ties. They contend that the limitations are not well-founded. When lowering aul, they (the husband and wife) receive the same responsibilities. Naturally, there's no need to distinguish when obtaining more rights. In accordance with Uthman's ijtihad, the heirs who received the rad were:

- a. Husband and wife
- b. Father
- c. Grandpa, go upstairs
- d. Mother
- e. Grandma
- f. Girl
- g. Boy's granddaughter
- h. Siblings
- i. Father's sister
- j. Mother and sister
- k. Siblings.

According to the Guidelines for the Implementation of Duties and Administration of Religious Courts, widows and widowers are not required to go through the residual asset distribution process in rad situations. This perspective aligns with that of certain associates, such as Ali bin Abi Talib, who asserts that all beneficiaries of Zawil Furudh, excluding spouses, are entitled to receive rad. The denial of inheritance rights to a husband and wife is based on the principle that

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inheritance is solely reserved for the biological offspring of blood relatives. This is based on the statement made by Allah in Surah al-Anfal, verse 75, to be precise:

وَالَّذِينَ عَامَّوْا مِنْ بَعْضٍ وَهَاجَرُوا وَجَهَدُوا مَعَكُمْ فَأُولَٰئِكَ مِنْ أَوْلِيَاءِ الرَّحْمَـٰنِ بَعْضُهُمْ أُولُوٓ بِعْضٍ في كَنْبِ التَّكْبِيرِ إِنَّ اللَّهَ يُحْسَبُ لَهُمْ عِلَٰمٗا

And those who believed after [the initial emigration] and emigrated and fought with you - they are of you. But those of [blood] relationship are more entitled [to inheritance] in the decree of Allāh. Indeed, Allāh is Knowing of all things

This paragraph emphasizes the significance of uterine connections in comparison to other interactions. Therefore, individuals who are biologically related through blood relations (uterus) rather than through marriage ties (consanguinity or sababiyah) are the rightful heirs who have the entitlement to receive rad. The husband and wife are not entitled to inherit because death will terminate their familial relationship. This is additionally reinforced by the divine utterance of Allah SWT in surah al-Ahzab verse 6.

الَّذِينَ أَوْلَىٰ بِلِّمَؤُومِينَ مِنْ أَنفُسِهِمْ وَأُرُوجُهُمْ فَأُولُوٓ بِعْضٍ بَعْضٍ وأُولُوٓ الرَّحْمَـٰنِ بَعْضُهُمْ أُولُوٓ بِعْضٍ في كَنْبِ التَّكْبِيرِ إِنَّ اللَّهَ مِنْ أَلْبَاسِ مَسْطُورٗا

The Prophet has a stronger affinity to the believers than they do themselves. And his wives are their mothers. As ordained by Allah, blood relatives are more entitled ‘to inheritance’ than ‘other’ believers and immigrants, unless you want to show kindness to your ‘close’ associates ‘through bequest’. This is decreed in the Record.

The term wajhu al-istidlal affirms that Allah has determined that individuals who have a familial bond possess a stronger entitlement to inheritance compared to those who do not. This verse possesses a general quality, rendering it incapable of being tailored to any other subject matter. The assets that are left after the ashabul furudh receive their portions must be returned to those who have priority, namely the priority side of inheritance. Due to the continued existence of familial ties, their inheritance rights remain contingent upon this connection.21

This group makes assumptions not only from the verse's suggestions but also from a passage in the muttafaq ‘alaih hadith that says:

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21 Muhammad Muhyiddin Abdul Hamidi, Panduan Waris Empat Mazhab, (Jakarta: Al-Kautsar, 2009), p. 246

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“I have more rights towards the believers than themselves,” declared the Messenger of Allah. That being said, I will settle any debt left by a believer who passes away. And property left by a deceased person belongs to his heirs.”

The hadith of Rasulullah, however, contradicts the first group’s opinion that there is no such thing as Rad:

Meaning: Said bin Abi Waqas stated, "My illness is getting worse, O Messenger of Allah, while I have wealth, I have no heirs except a daughter. Can I give away two thirds of my wealth?" "No" was the Prophet's response. What about half, I asked? The Prophet said: "no." I said, "How about a third?" One third, the Prophet retorted; that is a lot. It is preferable to leave your heirs wealthy rather than impoverished, forcing them to rely on others for support. (HR. Muttafaq alaih).

According to this hadith, Sa’id bin Abi Waqas had a daughter who was his successor. He intended to leave half or two thirds of his property to his daughter, even though the daughter’s share was only half of what the Qur’an designated as ashabul furudh. However, the Messenger of Allah only verified that he would leave one third. All of the remaining fortune is transferred to the girls by the religious teaching not to leave successors in impoverished circumstances.

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Conclusion

*Rad* inheritance is a strategy for distributing inherited property in cases where there is either an insufficient amount of inheritance available from the original source, or when there are fewer heirs than the original source of the inheritance. Disputes often arise in Religious Courts regarding settlements. An example of this is decision No. 223/Pdt.G/2017/MS.Bna, in which the judges of the Banda Aceh *Sharia* Court awarded Baitul Mal the remaining inheritance (*rad*) based on legal reasoning derived from the book *Hasyiyah al-Bajuri*, Qanun Number 11 of 2002 regarding the Implementation of Islamic *Sharia* in the areas of *Aqidah*, Worship, and Islamic *Sharia*; Article 11 paragraph (1) and Article 14 Aceh Qanun Number 7 of 2004 regarding Zakat Management. The Aceh *Syari’yah* Court's Panel of Judges has expressed their disagreement with the provisions outlined in Article 193 KHI. These provisions dictate that any remaining inheritance should be allocated to the heirs of the *zawil furudh*, namely the husband (plaintiff/appellee) and the daughter (defendant/appellant). This disagreement was stated in decision no. 52/Pdt.G/2018/MS.Aceh, which is an appeal of decision no. 223/Pdt.G/2017/MS.Bna. Zaid bin Thabit and scholars from the *Malikiyah* and *Syafi’iyah* schools of thought, in accordance with Islamic law, endorse decision no. 223/Pdt.G/2017/MS.Bna. This judgment distributes the remaining inheritance to Baitul Mal. These academics argue that if the inheritance is still in Baitul Mal, it should be inherited by the institution itself rather than being distributed among individuals who receive a specific share. Meanwhile, the judges panel finding at Aceh *Syar’iyah* Court No. 52/Pdt.G/2018/MS.ACEH aligns with Utsman bin Affan's perspective, which states that marital relations are encompassed by the concept of *rad*, referring to the return of property, and so all *furudh* heirs have the right to *rad*. They argue that the constraints lack a solid basis. When reducing the workload, both the husband and wife are assigned equal tasks. There is no necessity to differentiate while acquiring more privileges.

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