

Application of Inheritance Law in Interfaith Marriages: Legal Challenges and Solutions

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Abstrak: *Interfaith inheritance in Indonesia reflects a complex legal issue because it involves conflicts between religious values and national legal principles. Under Islamic law, interfaith inheritance is not permitted, while the Civil Code does not differentiate between the religions of the testator and the beneficiary. This condition creates conflicting norms and legal uncertainty in judicial practice, especially when judges are faced with the choice of which legal system to apply. This study aims to analyze the legal disharmony between religious norms and national law and to find a just and humane legal solution for resolving interfaith inheritance cases. The research method used is normative juridical with a statutory, conceptual, and case study approach, using primary, secondary, and tertiary legal materials. The results show that the absence of specific regulations leads to differences in court decisions and weak legal certainty. A possible solution is through the concept of mandatory wills as a bridge between religious principles and the principle of substantive justice. This study concludes the need for harmonization of national inheritance law to be more inclusive, just, and respectful of the plurality of Indonesian society.*

Keywords: *Inheritance Law; Interfaith Marriage; Substantive Justice*

INTRODUCTION

The phenomenon of interfaith marriage in Indonesia reflects the social dynamics of a diverse and pluralistic society. Amidst ethnic, cultural, and religious diversity, interfaith marriage embodies the complex social interaction between individual freedom and state-recognized religious norms. In practice, interfaith marriage often sparks public debate because it touches on sensitive issues concerning human rights, religious freedom, and the national legal system, which still relies on the principle of conformity with each individual's religious law.¹The provisions in Article 2 paragraph (1) of Law Number 1 of 1974 concerning Marriage emphasize that the validity of a marriage is determined based on the religious law and beliefs of the couple. The

implication of this provision is the existence of normative limitations on the state's legal recognition of interfaith marriages. Many couples then choose alternative routes such as holding their marriage abroad or through a court order to have their marriage recognized administratively. This condition indicates a gap between positive legal norms and the social reality that develops in society.²

The legal status of interfaith marriages carries far-reaching consequences, particularly for children's status and civil rights, including inheritance. In the context of family law, unclear marital status can create legal uncertainty for children, particularly regarding inheritance rights, guardianship, and future legal recognition.³This demonstrates that religious differences impact not only

¹ Nasrul, N., Yusuf, M., & Mubarak, M. (2024). Pernikahan Beda Agama Tinjauan Fikih dan Tantangan Kehidupan Multikultural di Indonesia. *CENDEKIA: Jurnal Ilmu Pengetahuan*, 4(3), 243-252.

² Afda'u, F., Prasetyo, B., & Saryana, S. (2024). Membedah Pengaturan dan Sanksi

Pernikahan Beda Agama Dalam Hukum Indonesia. *Binamulia Hukum*, 13(2), 393-406.

³ Sri Windani, S. H., Indri Meiliawati, S. H., & Zulfikar, S. H. (2025). *Hukum Keluarga Indonesia*. Detak Pustaka. hlm. 37

theological aspects but also give rise to legal issues that require comprehensive solutions. The inheritance law system in Indonesia is derived from three main legal systems: Western civil law (KUHPperdata), customary law, and Islamic law.⁴All three have different principles for determining who is entitled to inherit. In Islamic law, religious differences between the testator and the heir preclude inheritance, as affirmed by the principle "la yaritsu al-muslim al-kafira wa la al-kafiru al-muslima."⁵In contrast, in Western civil law systems, religion is not a consideration in determining inheritance rights. This difference in principles creates clashes of norms, particularly when interfaith couples have heirs of different faiths.⁶

These legal conflicts often give rise to complex legal issues. A fundamental question that often arises is whether an heir of a different religion can inherit from an heir of a different religion. The absence of explicit provisions in national law leads to uncertainty and disparity in court decisions. In some cases, courts reject interfaith inheritance requests, but in others, judges use a substantive justice approach through granting gifts or wills as a compromise. This demonstrates that the Indonesian legal system is still seeking a balance between religious norms, social justice, and legal certainty.

The gap between the values of justice and legal certainty is a central issue in interfaith inheritance. The principle of substantive justice requires that every citizen receive equal legal protection, without discrimination based on religion. However, reality shows that legal treatment for interfaith heirs remains unequal. According to Satjipto Rahardjo, the law should function as a tool for human liberation, not as a

barrier to human rights.⁷This thinking is relevant for encouraging a reinterpretation of inheritance law that is more oriented toward substantive justice. The principle of expediency is also an important consideration in resolving interfaith inheritance issues. In a social context, kinship ties and humanitarian values often outweigh differences in belief. Therefore, the use of legal instruments such as gifts, wills, or joint property division agreements is the most realistic alternative. Several Supreme Court and Constitutional Court decisions have demonstrated a progressive approach that considers humanitarian aspects, without neglecting the constitutional principles of religious freedom and equality before the law.⁸

Addressing this issue requires the creation of more comprehensive national legal norms that are responsive to Indonesia's religious plurality. Existing regulations are still sectoral and unable to bridge the gap between religious law and state law. Reform of inheritance law is needed to ensure the protection of every citizen's civil rights in the context of interfaith marriages. A proportional approach between religious values, humanity, and social justice is the basis for strengthening an inclusive national legal system. This research is important because there is still a gap in norms and inconsistencies in the application of law in interfaith inheritance cases in Indonesia. The main problem lies in the disharmony between religious law and national law, which has implications for certainty and justice for the parties.

RESEARCH METHODS

This research uses a normative juridical method, a legal research method that focuses on the study of applicable positive legal norms.

⁴ Agustin, F., Hasuri, H., & Najmudin, N. (2022). Kedudukan Hukum Islam dalam Pelaksanaan Waris di Indonesia. *Mizan: Journal of Islamic Law*, 10(1), 109-118.

⁵ Sabir, M. (2019). Wasiat wajibah bagi ahli waris beda agama (Analisis terhadap putusan Mahkamah Agung nomor: 368K/AG/1995). *DIKTUM*, 188-210.

⁶ Sanjaya, S. (2024). Dualisme sistem hukum waris: Tantangan implementasi hukum waris islam dalam konteks perdata nasional di Indonesia

dan Malaysia. *CBJIS: Cross-Border Journal of Islamic Studies*, 6(2), 395-408.

⁷ Ruslan Renggong, S. H., Ruslan, D. A. R., & SH, M. K. (2021). *Hak Asasi Manusia Dalam Perspektif Hukum Nasional*. Prenada Media. hlm. 19

⁸ Manalu, I. A., Lubis, U. U., & Desiandri, Y. S. (2024). Hak Asasi Manusia dan Keadilan Sosial: Analisis Implementasi Nilai-Nilai Pancasila dalam Sistem Peradilan. *Innovative: Journal Of Social Science Research*, 4(6), 5308-5316.

Normative juridical research is conducted by examining library materials or secondary data covering legal principles, legal systematics, and the synchronization of laws and regulations to find answers to legal problems.⁹The approaches used include a statute approach to examine legal norms governing interfaith marriage and inheritance, a conceptual approach to understand the concept of justice and legal certainty in the context of religious pluralism, and a case study approach to analyze court decisions related to interfaith inheritance in Indonesia. The data used consists of primary data in the form of court decisions and laws and regulations, secondary data in the form of literature, journals, and opinions of legal experts, and tertiary data such as legal dictionaries and encyclopedias that support the legal analysis in this study.

RESULT AND DISCUSSION

Concept and Regulation of Inheritance Law in the Indonesian Legal System

Inheritance law is a branch of civil law that has a strategic function in maintaining the continuity of a person's rights and obligations after death.¹⁰This law not only plays a role in regulating the distribution of inherited assets, but also reflects the moral, social, and justice values that exist in society. In the context of a diverse country like Indonesia, inheritance law issues become increasingly complex because they must be adapted to the plurality of applicable legal systems, namely Western civil law, Islamic law, and customary law. This complexity reaches its peak when faced with cases of interfaith marriage, which gives rise to debate between positive legal norms, religious teachings, and social realities. Doctrinally, inheritance law is defined as a set of rules governing the transfer of property rights of a deceased person to the rightful heirs. According to Subekti, inheritance law is the law that

regulates the legal consequences of a person's death on their assets, as well as to whom those assets should be handed over.¹¹This definition emphasizes that inheritance law has two main dimensions: a civil dimension, which concerns property ownership rights; and a social dimension, which concerns family relationships and social balance. In the context of interfaith marriages, these two dimensions often collide due to differences in the legal systems used to determine inheritance rights.

The aim of inheritance law is basically to ensure that the rights and obligations of the heir continue legally and fairly to his heirs.¹²Through inheritance law regulations, it is hoped that legal certainty will be created in the distribution of inherited assets while maintaining family harmony. However, in cases of interfaith marriages, this goal is often difficult to achieve because differences in belief systems create a disconnect between the religious law that forms the basis for the validity of the marriage and universal national law.

Indonesian inheritance law is built on several fundamental principles that serve as the foundation for its practice. The principle of justice requires that every distribution of inheritance be carried out by considering the rights and needs of each heir without discrimination. The principle of balance emphasizes the importance of maintaining a balance between individual rights and social responsibilities towards the family. Meanwhile, the principle of legal certainty ensures that every inheritance process is carried out based on clear legal provisions, thereby preventing future disputes. These three principles serve as an ideal normative foundation, although in practice they often face challenges of varying interpretation. In addition to the principles of justice and legal certainty, Indonesian

⁹ Al-Fatih, S. (2023). *Perkembangan Metode Penelitian Hukum di Indonesia*. UMM Press. hlm. 10

¹⁰ Natania, M., & Lesmana, J. (2024). Analisis Sistem Pewarisan di Indonesia Dalam Perspektif Hukum Perdata. *Jurnal Kewarganegaraan*, 8(1), 990-999.

¹¹ Muhibbin, M., & Wahid, A. (2022). *Hukum Kewarisan Islam: Sebagai*

Pembaruan Hukum Positif di Indonesia (Edisi Revisi). Sinar Grafika. hlm. 25

¹² Prabowo, S., Sudirman, M., & Tondy, C. J. (2023). Perlindungan Hukum Bagi Ahli Waris Terhadap Harta Warisan Yang Beralih Tanpa Persetujuan Ahli Waris. *Jaksa: Jurnal Kajian Ilmu Hukum dan Politik*, 1(3), 63-70.

inheritance law also recognizes the principles of kinship and gender equality. The principle of kinship implies that the distribution of inheritance should strengthen family ties, rather than create conflict among heirs. The principle of gender equality demonstrates the development of a modern legal paradigm that grants equal inheritance rights to men and women. However, in the context of interfaith marriages, these principles cannot always be consistently applied due to differences in religious interpretations, which often place one party in a weaker position.¹³

Indonesia adheres to pluralistic inheritance law, comprising three main systems: Western civil law (KUHPerdata), Islamic law, and customary law. This plurality is a historical legacy of colonialism and the social development of Indonesian society. Western civil law originates from the *Burgerlijk Wetboek (BW)*, which was in effect during the Dutch East Indies era and now applies to citizens who do not adhere to any particular religious law.¹⁴ Islamic law applies to Muslims and is codified in the *Compilation of Islamic Law (KHI)*, while customary law originates from social norms and local traditions that still exist in various regions.¹⁵ Western civil law, as stipulated in the *Civil Code*, regulates inheritance based on blood relations and family legal status without considering religious factors. Under this system, everyone with a familial relationship has the right to inherit, as long as there is no legal reason to waive that right. This principle of secularism in the *Civil Code* is often used as the legal basis for inheritance disputes between interfaith couples because it does not view differences in faith as a barrier to inheritance.

In contrast, Islamic law has stricter basic principles. Based on the *Quran* and *Hadith*, one of the absolute requirements for inheritance is the same religion between the testator and the

heir. This means that if the testator is Muslim and the heir is non-Muslim, inheritance cannot occur. This principle is affirmed by the majority of scholars, who believe that religious differences are the main obstacle to inheritance. Consequently, in an interfaith marriage, one party or child of a different religion cannot inherit under Islamic law.¹⁶

The *Compilation of Islamic Law (KHI)* attempts to provide a solution to this problem by implementing the concept of a mandatory will. A mandatory will allows the transfer of a portion of one's assets to a party of a different religion as a form of respect for family ties, without violating sharia provisions. This concept is considered a humanistic legal breakthrough, although its application remains limited because it has not been fully adopted by all religious courts. Customary law, on the other hand, is more flexible in addressing religious differences. In many indigenous communities in Indonesia, family relationships take precedence over differences in belief. Inheritance is often based on deliberation and family agreement, rather than solely on religious norms. This flexibility allows for social justice in multicultural societies, although it can also lead to inconsistencies between regions.

Religion plays a crucial role in determining the applicable inheritance law system. Article 2, paragraph (1) of Law Number 1 of 1974 concerning Marriage stipulates that the validity of a marriage is determined by the laws of each religion and belief. Consequently, when interfaith marriages occur, confusion arises in determining the inheritance law system to be used. This situation creates a dualism between religious law, which rejects interfaith inheritance, and positive law, which does not differentiate between them. In civil law, the position of legitimate children and illegitimate children is important in the context of

¹³ Saputro, E. A., & Rifa'i, M. (2024). *Nikah Beda Agama: Perspektif Tafsir al-Qur'an, Hukum Islam, dan Ketentuan HAM Indonesia. SAMAWAT: Journal Of Hadith and Qur'anic Studies*, 8(2), 40-59.

¹⁴ Salim, H. S., & Sh, M. S. (2021). *Pengantar Hukum perdata tertulis (BW)*. Bumi Aksara. hlm. 48

¹⁵ Siregar, F. A. (2018). Ciri hukum adat dan karakteristiknya. *Jurnal Al-Maqasid: Jurnal Ilmu Kesyarahan Dan Keperdataan*, 4(2), 1-14.

¹⁶ Hariyanto, B. (2020). Tinjauan yuridis terhadap pembagian harta waris beda agama menurut kitab undang undang hukum perdata (KUH Perdata) dan kompilasi hukum Islam (KHI). *IUS: Jurnal Ilmiah Fakultas Hukum*, 8(2), 28-42.

inheritance. Legitimate children have full rights as heirs of both parents, while illegitimate children only have rights to their mother and their mother's family, unless recognized by their father. When an interfaith marriage occurs and is not recognized by either religious law, the child's legal status can become unclear, which has implications for their inheritance rights.¹⁷

Legal experts like Hazairin emphasize that Indonesia's inheritance law system should be oriented toward a spirit of family, as embodied in the values of Pancasila. Hazairin believes that Islamic law in Indonesia needs to be interpreted contextually and adapted to the social realities of a pluralistic society.¹⁸ This opinion provides an important basis for understanding that the law cannot be applied rigidly without considering the principles of humanity and social justice. The disharmony between inheritance legal systems in Indonesia has led to many inheritance disputes in interfaith marriages ending in legal uncertainty. Some courts rule based on civil law, while others adhere to Islamic law. This lack of uniformity in the basis of considerations creates disparities in decisions and threatens the principle of equality before the law. Furthermore, the absence of explicit regulations governing interfaith inheritance in national law further exacerbates this uncertainty.

The state has a responsibility to create harmony between existing legal systems. Through the creation of inclusive national inheritance laws or codification, it is hoped that a balance can be achieved between religious principles, customs, and positive law. This harmonization is also a strategic step to strengthen legal certainty and prevent discrimination in the distribution of inheritance due to religious differences. Legal uncertainty in interfaith inheritance also impacts human rights. The principle of substantive justice demands that every citizen receive equal legal treatment without discrimination based on belief. In this context, inheritance laws that are exclusive to a particular religion have the

potential to violate the principle of equality before the law as guaranteed in Article 27 paragraph (1) of the 1945 Constitution.

The study of inheritance law in the context of interfaith marriages is relevant because this social phenomenon continues to increase along with changes in the mindset of modern society. Interfaith marriages reflect social dynamics and the constitutionally guaranteed right to religious freedom, but they also have complex legal consequences. The absence of clear legal norms creates a legal vacuum and disparities in court decisions in determining inheritance rights for interfaith couples.

Challenges and Efforts to Resolve the Implementation of Inheritance Law in Interfaith Marriages

The conflict between religious values and national legal principles in the context of interfaith inheritance in Indonesia is a problem that reflects the complexity of the relationship between law and social diversity. Islamic law expressly prohibits interfaith inheritance based on the principle of faith, which is the basis of family relationships in Islam. On the other hand, the national legal system, through the Civil Code (KUH Perdata), does not consider religion a determining factor in inheritance, but rather emphasizes blood relations and civil status as the basis for inheritance rights. This fundamental difference creates a normative tension between religious norms and the principle of equality before the law, which is upheld in the national legal system. This difference reflects the dualism of values within the Indonesian legal system. On the one hand, national law must respect religious values that are part of the community's identity. On the other hand, the state has a constitutional obligation to uphold equal rights for all citizens without religious discrimination. This tension poses a serious challenge to efforts to realize

¹⁷ Gultom, L. H., Nainggolan, J. A., Sitohang, A. T., & Manalu, S. (2023). Implikasi Pernikahan Beda Agama Dalam Fiqh Islam Terhadap Kewargangaraan Dan Identitas Anak. *Al Fuadiy Jurnal Hukum Keluarga Islam*, 5(2), 11-19.

¹⁸ Afrizal, A., & Fauzan, F. (2024). Tinjauan Filsafat Hukum Islam dalam Pembagian Ahli Waris Pegganti. *USRATY: Journal of Islamic Family Law*, 2(1), 1-14.

just laws that align with the principles of the Pancasila state.¹⁹

The conflict between religious law and national legal principles is not merely a normative issue, but also concerns the social legitimacy of the law itself. Muslims, for example, will reject the application of civil law permitting interfaith inheritance, as it is considered contrary to Islamic law. Conversely, for those who adhere to the principles of constitutionalism and equality, the prohibition on interfaith inheritance can be seen as discriminatory and contrary to human rights. Judges, as executors of judicial power, face a dilemma in dealing with this issue. When faced with interfaith inheritance cases, judges must determine the legal basis to be used, whether based on Islamic law, civil law, or even customary law. This choice not only impacts the outcome of the decision but also the social and moral legitimacy of the decision itself in the eyes of the community.

An interpretive approach is key to resolving this issue. Judges are required to rely not only on positive legal texts but also on substantive justice and human values. As Satjipto Rahardjo argues, law should not be understood narrowly as a collection of rules, but rather as an instrument for achieving social justice within society.²⁰ This thinking emphasizes the importance of progressive law in addressing conflicts between religious values and the principle of equality under the law. Differing court decisions in similar cases demonstrate the lack of uniformity in the application of the law in interfaith inheritance cases. Some courts reject interfaith inheritance rights outright, while others use a compromise approach through the mechanism of a mandatory gift or will. This inconsistency weakens legal certainty and creates confusion in society.

Legal certainty is one of the main pillars of a state based on the rule of law. In the context of interfaith inheritance, this uncertainty creates injustice because the outcome of a decision can depend heavily on the judge's subjective views

or differing perceptions of religious norms. This situation weakens public trust in the judiciary and creates the impression that the law does not provide equal protection for all citizens. The principle of justice is a fundamental foundation of every legal system. In the context of interfaith inheritance, substantive justice demands that the law protect family rights regardless of differences in belief. Family rights should not be diminished due to religious differences, as blood ties and moral responsibility remain inherent between the parties. Therefore, the law must function as a means of reconciling religious and humanitarian values.

Reinterpreting religious norms is crucial to ensure the law remains relevant in the context of pluralistic Indonesian society. Reinterpretation does not mean eliminating religious teachings, but rather understanding their essential values within the framework of the public good. In this regard, justice is not only theological but also social, recognizing the existence of humans as dignified and equal beings before the law. A mandatory will is one legal solution that has developed in Indonesian judicial practice. This concept provides space for heirs of different faiths to receive a share of the testator's inheritance without violating religious principles prohibiting interfaith inheritance. A mandatory will thus serves as a bridge between Islamic law and the principles of social justice.

In several Supreme Court decisions, such as Decision No. 368 K/AG/1995, judges granted non-Muslim children the right to inherit the inheritance of Muslim parents through the mandatory will mechanism. This decision set an important precedent in developing a more inclusive and humanistic legal approach. This approach also demonstrated that the law can adapt to social realities without negating religious values. Notaries play a strategic role in preventing interfaith inheritance disputes by drafting wills and property distribution deeds. A notary's responsibility is not only administrative but also ethical, namely ensuring

¹⁹ Aseri, M., & Mubarak, M. Z. (2022). Hubungan Kewarisan Antar Agama Dalam Perspektif Islam. *Al Qalam: Jurnal Ilmiah Keagamaan dan Kemasyarakatan*, 16(2), 590-599.

²⁰ Rismawati, S. D. (2015). Menebarkan keadilan sosial dengan hukum progresif di era komodifikasi hukum. *Jurnal Hukum Islam*, 13(1), 1-12.

justice for all parties involved.²¹By understanding the complexities of interfaith inheritance laws, notaries can help communities prepare legal instruments that protect family rights proportionally.

Judicial institutions also play a crucial role in ensuring the application of the principle of justice in interfaith inheritance cases. Judges must consider all legal, sociological, and philosophical aspects when making decisions. Law enforcement that emphasizes only textual formalities without regard for substantive justice can result in inequalities that are inconsistent with the spirit of the constitution. Harmonizing the law between civil, Islamic, and customary law systems is a crucial step towards creating an inclusive national inheritance legal system. This harmonization is not intended to standardize all legal systems, but rather to find common ground that allows each system to contribute to justice. The principles of *lex specialis* and *lex generalis* can be regulated proportionally to avoid conflicting norms in practice.

The development of a national inheritance law is an urgent need in the context of Indonesia's legal pluralism. The law is expected to integrate the various existing inheritance legal systems without eliminating their respective unique characteristics. Clear regulations will reduce overlapping norms and strengthen legal certainty for communities living in religious and cultural diversity. National inheritance regulations should be based on the principles of justice, humanity, and equality before the law. These values align with the country's constitutional foundation, which places Pancasila as the source of all legal sources. By making substantive justice its primary orientation, a national inheritance law can serve as an instrument for reconciling religious law with universal human rights principles.

The Constitutional Court plays a crucial role in providing a constitutional interpretation of interfaith inheritance rights. Constitutional

interpretation is necessary to affirm that protection of inheritance rights is part of the guarantee of human rights that cannot be diminished on the basis of religion. The Constitutional Court's ruling in this case can serve as a jurisprudential guideline for judges throughout Indonesia in handling similar cases. The establishment of a permanent jurisprudence on interfaith inheritance cases will also provide a more definite direction for the judicial system. Jurisprudence serves as a normative guide that encourages consistency in the application of the law, while also reinforcing the principle of equality before the law.²²Consistency in decisions will reduce legal uncertainty and provide a sense of justice for the public. The issue of interfaith inheritance concerns not only positive law but also ethical and social dimensions. The law must be present to ensure that every citizen is treated fairly regardless of faith. Reforming national inheritance law by prioritizing a pluralistic and humanistic approach is a strategic step toward substantive justice.

CONCLUSION

The discussion of interfaith inheritance demonstrates a fundamental conflict between religious norms and the national legal principles applicable in Indonesia. In the context of Islamic law, interfaith inheritance is expressly prohibited because differences in belief are considered to sever the inheritance relationship. Conversely, in the civil law system, as regulated by the Civil Code, religion is not used as a differentiating factor in determining the legal relationship between the testator and the heirs. This difference in principles gives rise to both legal and sociological conflicts, particularly when society is faced with the coexistence of legal plurality in Indonesia. Judges, as interpreters and enforcers of the law, are often faced with a dilemma in determining the legal basis to be used in resolving interfaith inheritance disputes, whether based on Islamic law, civil law, or customary law. This situation demonstrates the urgent need to establish

²¹ Keliat, V. U., Setiawan, S., & Arnilis, Y. (2025). Peran Notaris Dalam Pembagian dan Penyelesaian Sengketa Waris. *UNES Law Review*, 7(4), 1466-1479.

²² Solehah, I. (2024). Relevansi Yurisprudensi sebagai Instrumen Pembaruan Hukum di Indonesia. *YUDHISTIRA: Jurnal Yurisprudensi, Hukum dan Peradilan*, 2(3), 50-58

uniform legal interpretation to avoid creating legal uncertainty in society.

The application of the concept of substantive justice is key to bridging the conflict between religious values and national legal principles. This approach emphasizes that the law must favor humanitarian values and protect family rights without disregarding the religious beliefs of the parties. The mandatory will mechanism can be an alternative solution that balances religious principles and social justice, as has been implemented in several court decisions. However, this solution is still case-specific and lacks uniform legal force. It is necessary to establish a national inheritance law that integrates the various legal systems existing in Indonesia Islamic, civil, and customary based on the principles of justice, humanity, and equality before the law.

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