International Journal of Civil Law and Legal Research

E-ISSN: 2789-8830
P-ISSN: 2789-8822
IJCLLR 2023; 3(2): 44-50
Received: 05-05-2023
Accepted: 11-06-2023

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Critical appraisal of ethical issues in legal research

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Abstract
Ethical concerns surrounding the conduct of legal research have generated considerable research interest among researchers around the globe. As a result, there is a growing emphasis on the need to ensure that researchers conduct their research responsibly having regard to certain established ethical norms and standards. This paper examined the ethical issues involved in the process of legal research. It observed that ethical norms are often overlooked in legal research involving human participants, leading to potential harm to participants and damage to the integrity of research findings. It posited that ethical principles of informed consent, voluntary participation, privacy, and confidentiality are germane to research integrity and that legal researchers are expected to abide by them in conducting research for a more credible outcome. The paper adopted a library-based research approach, wherein relevant pieces of literature and statutory and judicial authorities were assembled and reviewed. The paper recommends that academic and research institutions establish sound policies and regulations to address unethical research practices. It also recommends that legal researchers should be regularly trained on the principles and significance of research ethics and their impact on human participants in the research process.

Keywords: Ethics, issues, legal research, research, human participant

Introduction
Legal research involves the evaluation of legal concepts and rules to promote a logical understanding of the law [1]. It implies the examination of legal situations, phenomena and subject-matter [2]. Legal research also involve the process of investigating legal and non-legal rules to determine their impact on human society. The main goal of legal research has been succinctly adumbrated thus:

All collective human life is directly or indirectly shaped by the law. Law is, like knowledge, an essential and all-pervasive fact of the social condition. In no area of life, whether it is the family or the religious community, scientific research on the internal network of political parties can find a lasting social order that is not based on law. A minimum amount of legal orientation is indispensable everywhere [3].

The quality of every research process depends on whether or not it complies with established ethical norms governing the conduct of research. These principles are commonly known as research ethics. Research ethics is a normative concept and a branch of applied ethics that deals with the morality of research [4]. It address issues relating to the ethics of data collection, analysis, reportage, and publication [5]. The principle of research ethics is intended to promote accountability and transparency in the research process [6]. It also aimed at protecting competing interests and ensuring that information relating to research participants is safe and secured. The principles of research ethics include informed consent, voluntary participation, balance of harm and benefit, and conflict of interest.

These principles have been incorporated into several codes of professional conduct, journal guidelines, institutional policies, and government regulations to promote the integrity of research. They are usually applied to ensure that the interest of human participants is adequately protected in the research process.

This paper seeks to examine the ethical issues in legal research and identify how those issues can be addressed. It posits that research ethics is indispensable to the process of legal research due to the increasing relationship between law and social sciences. As a result, legal researchers are expected to pay greater attention to those factors capable of comprising research integrity as to mitigate their impact on the research process. This study is significant in two ways: Firstly, it strengthens the body of knowledge by expanding previous research on research ethics as it relates to legal research involving human participants. Secondly, outcomes of the study will be relevant to the entire research setting, particularly academic

and legal research institutions. This paper is divided into three parts: The first part introduces the subject matter and provides a general overview of the study. The second part focuses on a historical overview of research ethics. The third part discusses the ethical issues that are implicated in the legal research process. The fourth part addresses the negative consequences of unethical research practices. Finally, the fifth part provides the conclusion and recommendations.

The History of Research Ethics

The history of research ethics can be traced to several unpleasant events which have assisted in redefining research process globally. These unethical incidents include:

Nazi Human Experimentation

Nazi human experimentation involved several unethical medical practices that characterized the Nazi regime during World War II and the Holocaust in the 1940s. During this period, many individuals, including children, were held as prisoners of war at the concentration camps established by the Nazi regime. They were subjected to various kinds of medical experiments, such as high-altitude experiments, freezing, bone and nerve regeneration, saltwater consumption, poison gas, sterilization, poison, sulfanilamide, incendiary bombs, etc. These experiments were carried out without the consent of the victims. No anesthesia was administered to relieve them of the excruciating pain of those unpatriotic medical adventures. The experimentation resulted in the deaths of many prisoners who were held captive, while several others suffered various degrees of disability, ranging from emotional and psychological trauma to insanity. Members of the international community condemned these unethical medical practices. As a result, senior physicians in the Nazi regime were tried for offenses ranging from conspiracy to murder including crimes against humanity in the notable case of USA v. Karl Brant (commonly known as the "Doctor's Trial"). In that case, nine Nazi physicians were sentenced to various terms of imprisonment, while seven others were discharged and acquitted of all the charges brought against them [7]. In addition to this laudable judicial pronouncement, the trial has also led to the development of the Nuremberg Code of Medical Ethics of 1947 [8]. The Code was designed to regulate medical research and protect human subjects against unethical research practices [9]. Paragraph 1 of the Code established the principle of voluntary consent. It mandates that researchers obtain the voluntary consent of research participants without any deceit, intimidation, or coercion. This obligation also requires researchers to take appropriate measures to ensure that participants are adequately educated about the purpose, procedures, benefits, and risks involved in the research process [10]. This will assist participants in deciding whether or not to take part in the research. The Nuremberg Code also seeks to ensure that participants are not subjected to any form of mental or physical torture [11]. Paragraph 6 of the Code provides for the principle of benefit and harm. It states that researchers must evaluate the advantages and risks associated with research before proceeding with it [12]. This responsibility requires researchers to put the benefits and risks on an imaginary scale to see where the scale tilts. Paragraph 9 of the Code guarantees the right of participants to withdraw from the research process. It states that participants are free to withdraw from the research at any stage if it appears that their mental and physical strength affects their ability to continue [13].

Thalidomide Scandal (1950-1966)

In Europe, the thalidomide crisis took place between the 1950s and 1960s. Chemie Grunenthal GmbH, a West German pharmaceutical business, developed the drug thalidomide to relieve morning sickness in pregnant women [14]. The medication was sold to several expectant mothers without the required examinations to ascertain its effects on unborn infants. Many children experience varied degrees of deformities arising from the administration of the medication. These deformities include loss of limbs, phocomelia, miscarriages, and stillbirth [15]. As a result, several employees of the company were charged with murder and homicide. However, the case was eventually settled out of court after the drug company agreed to pay the sum of 100 million DM into a special foundation as compensation to the victims of thalidomide [16]. This scandal has significantly transformed drug administration policies in many European countries. In the US, for instance, the Food, Drug, and Cosmetic Act was amended to make it mandatory for pharmaceutical companies to establish the efficacy, durability, and side effects of their products to the satisfaction of the Food and Drug Administration (FDA) before any license is issued [17]. To ensure that specified ethical principles were followed during the testing and trial of drugs, the FDA also established the Drug Efficiency Study Implementation (DESI) programme to reclassify already-marketed medications in the United States [18].

Tuskegee Syphilis Study (1932-1972)

The history of research ethics can also be traced to the issues surrounding the Syphilis Study conducted by the U.S. Public Health Service (USPHS) at Tuskegee between 1932 and 1972 [19]. The study involved about 600 black low-income African-Americans and was aimed at examining the natural progression of untreated syphilis in humans [20]. It was carried out without the consent of the participants who suffer from syphilis disease. Apart from the failure to obtain consent, officials of USPHS also misled the participants to believe that they were receiving therapy for “bad blood,” a term used in the native language to describe a variety of illnesses including syphilis, anemia, and weariness [21]. The study continued till 1943 even after the discovery of penicillin for the treatment of syphilis leading to the death of many participants while several others suffered various degrees of disability ranging from blindness to insanity [22]. As a result, an Adhoc Advisory panel was set up to reevaluate the execution of the study. The panel concluded that the study was conducted without compliance with the ethical principle of informed consent. Hence, it recommended that the study should be stopped and that appropriate compensation should be paid to affected victims. The study was halted in 1973 after the U.S. government had paid millions of dollars as compensation to the families of the victims

Identifiable Ethical Challenges in Legal and Socio-Legal Research

The aforementioned historical narratives of research ethics and the resulting ethical standards have been extremely helpful in guiding the conduct of research, especially socio-

legal research involving human participants. Socio-legal research is an area of research that examines the relationship between law and society. It is a multidisciplinary research strategy that involves the examination and interpretation of legal concepts, legal phenomena, and laws to determine how they relate to society. Socio-legal research implies a trans-disciplinary research methodology that blends law with social sciences like economics, history, philosophy, and religion [23]. The proponents of socio-legal scholarship believed that analyzing the relationship between law and society was the only way to fully comprehend the essence of law in society [24]. The importance of socio-legal research cannot be overemphasized. It offers a more comprehensive knowledge of the idea of law for the advancement of society. It also helps in creating the fresh legal doctrines, statutes, and rules required for comprehensive legal reforms. Additionally, it also helps in figuring out why specific criminal behavior and activity are common among a particular ethnic group, race, or nationality. Furthermore, it provides a broader perspective on the role and responsibility of governmental organs regarding the formulation and implementation of policies and programs for the well-being of society. Although socio-legal research has had a positive impact on society, it has also raised several ethical questions. These questions border on issues relating to informed consent, voluntary participation, confidentiality, and the privacy of human participants. Therefore, to ensure the integrity of research outcomes, legal researchers are obliged to adhere to those ethical standards in the conduct of socio-legal research involving human participants. The ethical norms are as follows:

Voluntary Participation

The term voluntary participation is used to describe a system of ethical values that requires human subjects who choose to participate in the research process or scientific experimentation to do so without any coercion, intimidation, or duress [25]. It implies the freedom to decide whether or not to participate in a research process. The principle of voluntary participation includes the right to withdraw from a research process at any stage without any repercussions. The principle of voluntary participation has been incorporated into codes of professional conduct, professional guidelines, and domestic and international regulations that govern research involving human subjects. Paragraph 1 of the Nuremberg Code provides for the principle of voluntary participation. It states that individuals are free to choose whether or not to participate in a research procedure. While voluntary participation may be strictly construed according to the participant's interest, it cannot be vitiated by activities that tend to make participation simple and painless. To this end, human subjects can be compensated for the loss of earnings, travel, and medical expenses incurred in the course of a research project. However, such compensations must be minimal and approved by the relevant Research Ethics Committee [26].

Informed Consent

Informed consent is one of the founding principles of research ethics. It is a systematic process of informing participants of the purpose, procedures, benefits, risks, and funding behind a research project to enable them to make an informed decision on whether or not to participate. The principle of informed consent requires researchers to obtain the consent of participants before they can participate in a research process. For consent to be informed, participants must understand properly the purpose of the research and what they are consenting to. Depending on the type of research being conducted and the methods used, consent may be given verbally or in writing. Written consent implies the endorsement of participants on a consent form. It is normally used where research procedures are inflexible, complicated, and involve many stages. It can also be adopted where participants have access to written information, particularly at the early stage of the research process. Written consent is important in research settings where the participants are largely educated and enlightened. Despite the different legal positions on the legality of a signed consent form, it is often regarded as additional evidence that the conditions of consent have been properly acknowledged and accepted. Oral consent, on the other hand, implies the verbal agreement of participants to take part in a research process. It is typically used when the majority of participants are uneducated and illiterate and cannot comprehend written information about the research. It can also be used when there are alleged political or cultural impediments that would make it difficult to obtain written consent. Additionally, it is appropriate in situations where the mere existence of a document puts the researcher or participant in danger. Oral consent could be obtained where the research involves video conferencing. Informed consent requires that participants be adequately informed about the risks involved in research to enable them to make an informed decision on whether or not to participate in it [27]. It also implies participants' knowledge about the source of funding, including relevant ethics committees and government approvals for the research [28]. Informed consent also implies that the researcher's names, their sponsors, and procedures for data collection, analysis, and publication are disclosed to participants [29]. The principle of informed consent is enshrined in codes of professional conduct, ethical guidelines, and national and international regulations. Paragraph 25 of the Declaration of Helsinki provides for the principle of informed consent. It mandates that researchers obtain the free and voluntary consent of participants, including those of their family members, when necessary before they can participate in the research project [30]. The issue of informed consent is also a subject of human rights norms. Article 7 of the International Covenant on Civil and Political Rights (ICCPR) of 1966 provides for the principle of informed consent. It states that "no one shall be subjected without his free consent to medical or scientific experimentation [31]." This provision has been expanded to include the right of prisoners and detainees not to be subjected to any scientific experimentation without examining their mental and physical well-being [32]. that Although informed consent remains sacrosanct in the research process, its application has been impeded by several social, cultural, and economic factors that are capable of compromising the voluntariness of consent [33]. Examples of those challenges include but are not limited to, the potential communication gaps between researchers and participants arising from the high rate of illiteracy, especially among rural dwellers. The capacity of participants to give informed consent and participate voluntarily in research could also be hindered by the level of poverty, hunger, access to healthcare, and unemployment that prevails in a particular society [34].

Anonymity and Confidentiality

Anonymity and confidentiality are integral components of research ethics. They are established to protect the privacy and personal information of human participants in the course of research [35]. Anonymity and confidentiality have two different meanings. Anonymity implies the right of participants not to disclose their personal information to researchers [36]. Confidentiality, on the other hand, means the moral obligation of researchers to keep participants' personal information away from third parties. The main distinguishing feature between anonymity and confidentiality is that while personal information about participants is unknown to researchers under anonymity, confidentiality requires that researchers have adequate knowledge of participants' details, which they cannot disclose to third parties without the express permission of participants [37]. The principle of confidentiality also requires that participants be adequately educated about situations that could vitiate the principle of confidentiality, including the risks involved in such breaches. This information will not only assist participants in making informed choices but will also help them to evaluate mechanisms that could protect their identity during and after the research process [38]. The principle of anonymity and confidentiality is enshrined in several codes of professional conduct, professional guidelines, and domestic and international regulations. Paragraph 18 of the 2002 International Ethical Guidelines for Biomedical Research Involving Human Subjects protects the right to anonymity and confidentiality. It states that "research investigators must establish secure safeguards of the confidentiality of subjects and research data, and that subjects must be told the limits, legal or otherwise, to the investigator's ability to safeguard the confidentiality and the possible consequences of breaches of confidentiality [39]."

Principle of Balance of Benefit and Harm

The balance of benefit and harm is one of the key principles of research ethics. Balance of benefit and harm implies that researchers weighed the advantages and risks involved in a research project before embarking on it. To achieve this objective, researchers are expected to put the potential benefits and harms on an imaginary scale to see where the scale tilts [40]. This will assist researchers in understanding the prospects and shortcomings of the research and enable them to make informed decisions on whether or not to continue with the research process. There are four categories of harm that every researcher is expected to put into consideration before embarking on a research process. They include psychological harm, physical harm, and social harm [41].

- **Psychological harm:** This harm usually occurs when participants are subjected to delicate and sensitive questions that can elicit anxiety and an unfavorable response from them.
- **Social harm:** This occurs when research procedures like questionnaires expose participants to social stigma and risks, including public embarrassment.
- **Physical harm:** This type of harm arises when participants are exposed to situations of bodily injury, pain, and hurt while conducting research.
- **Legal harm:** This category of harm is the exposure to legal liability that may arise from the disclosure of personal and sensitive information about a participant.

To promote research integrity, researchers are ethically bound to educate participants about every possible circumstance that may likely cause some harm to enable them to make informed decisions on whether or not to join the research. The principle of benefit and harm is enshrined in several professional codes, institutional policies, and national and international regulations. Paragraph 16 of the Declaration of Helsinki provides that "medical research involving human subjects may only be conducted if the importance of the objective outweighs the risks and burdens to research subjects [42]." This position is reaffirmed by the provision of paragraph 8 of the 2002 International Ethical Guidelines for Biomedical Research Involving Human Subjects. It mandates that the researcher take appropriate steps to minimize the potential risks of the research process for participants. This obligation includes the duty to adopt appropriate diagnostic, therapeutic, and preventive procedures to reduce the pain and injury that could endanger the lives of participants in the course of research [43].

Conflict of Interest

Conflict of interest (COI) is another critical aspect of research ethics capable of undermining the credibility of research outcomes. Conflict of interest arises when the personal interest of a researcher overrides his/her professional judgment [44]. It requires researchers to disclose material and non-material benefits associated with a research process. The principle of conflict of interest is violated when researchers allow their personal preferences to override their professional responsibilities. Conflict of interest is usually assessed by the circumstances surrounding the conduct of research and not the personal behavior and character of researchers. The principle of conflict of interest has been incorporated into institutional policies and guidelines to promote public confidence and trust in research findings [45]. COI may be actual, potential, or perceived. Actual conflicts of interest occur when there is a real conflict between the researcher's private interests and professional obligations. Potential conflicts of interest, on the other hand, refer to circumstances where there may be a future or foreseeable conflict between the researcher's professional obligations and personal interests. A conflict of interest is said to be perceived when the researcher's professional judgment is unduly influenced by his private interests, either now or in the future.

The ethical principle of conflict of interest also requires researchers to disclose their financial and non-financial interests in a research project as part of either ethical or regulatory requirements [46]. This obligation includes the responsibility to adequately explain potential conflict situations to research participants to assist them in making informed decisions about a research project. In *Grimes v. Kennedy Krieger Institute, Inc.* [47], the defendants argued that they were not legally bound to disclose a conflict of interest to the plaintiffs, who serve as participants in research that involved the examination of lead abatement techniques in homes where children are exposed to lead paint. They contended that the research formed part of the therapeutic relationship and that it does not require the disclosure of interest. The court rejected this argument and found that the researchers are legally bound to disclose conflicts of interest to the plaintiffs as contained in the informed consent document and federal research regulations. The court also held that the researchers are under a legal obligation to disclose the risks of lead

exposure to the parents or guardians of the research subjects. This position was also upheld in *Moore v. Regents of the University of California.* [48] In that case, the plaintiff, John Moore, was undergoing treatment for leukemia at the University of California, Los Angeles Medical Center when his doctor, Gorde, decided to create cell tissue from his skin, bone marrow, and sperm tissues because they were overproducing valuable immune proteins. The tissues were obtained after Moore was misled into believing that they were required to keep track of his health status. It was later learned, however, that the researcher had entered into a contract with several pharmaceutical companies to develop the cell line, which had a projected market value of $3 billion. The researchers were also found to have secured a patent for the cell line to develop it for commercial use. When Moore learned about this, he filed a legal action against the physician, researchers, and university for conversion, breach of fiduciary duty, lack of informed consent, and non-disclosure of financial interests. The court upheld the claimant's claim for breach of fiduciary duty and lack of informed consent because the researchers failed to disclose their financial interests, which were essential to his consent. The court noted further that physicians are mandated by law to disclose their interests unrelated to the patient's health, which can undermine their professional judgment. According to the court, failure to disclose these interests could give rise to several tort actions, including lack of informed consent and breach of fiduciary obligation.

This particular ruling is significant because it expands the scope of personal interests to include economic benefits that can undermine the professional judgment of a researcher. In Greenberg v. Miami Children's Hospital [49], the plaintiffs were a private foundation that donated their gametes to assist Reuben Matalon, a physician, conduct medical research to develop genetic tests for Canavan disease. Surprisingly, the physician and the hospital patented and commercialized the test without the approval or consent of the donors. As a result, the plaintiffs filed a lawsuit against the physician for several torts, including lack of informed consent, breach of fiduciary duty, conversion, and unjust enrichment. The Florida court held that there was no therapeutic relationship between the plaintiffs and Matalon, and since Matalon was only collecting tissue samples and not providing medical treatment, there was no fiduciary obligation on the researchers to disclose their financial interests to the donors. The court further held that it could not impose a fiduciary duty on the researchers to disclose their financial interests because to do so would amount to imposing unrealizable responsibility on researchers and impair research potentials generally. It is clear from the above judicial exposition that the disclosure of conflicts of interest helps promote public trust and confidence in research outcomes. Hence, legal researchers must make every attempt to resolve issues surrounding personal interests before embarking on a research project. Appropriate measures must also be put in place to ensure that participants are properly informed in the simplest possible terms of the information relating to the conflict of interest already disclosed. This approach should also include methodologies to identify and address potential cases of conflict of interest.

Data Fabrication and Falsification

Data fabrication and falsification are integral aspects of research ethics. Fabrication and falsification of data are used interchangeably in research ethics, but they mean two different things. Data fabrication entails the creation of research data and literature [50]. It also implies the dishonest development and publication of unknown data or literature to support specific research findings [51]. Data falsification, on the other hand, involves the deliberate manipulation of research data, literature, and procedures to produce false results [52]. Fabrication and falsification of data are serious, unethical research practices that undermine the integrity of a research process and render its outcomes unreliable. They could also affect public trust in academic and research institutions and their potential to conduct ground-breaking and innovative research. Unethical practices of data fabrication and falsification pose great danger to the public particularly when government authorities rely on manipulated data in the process of policy articulation and implementation.

Research Sabotage

Sabotage is another form of unethical research practice capable of undermining the integrity of research. Research sabotage involves the interference or obstruction of another person's research process to prevent its successful completion. Examples of sabotage include the destruction of research materials, the disclosure of confidential research information, the theft of research materials, and malicious or biased peer review. Many researchers engage in acts of sabotage for several reasons including the security of tenured positions, facilitation of research grant funding, and publication in prestigious academic journals. Researchers engage in acts of sabotage to gain a competitive edge over fellow researchers. Sabotage is a serious ethical misconduct that does not only affect the reputation of researchers but also the entire scholarly enterprise. Offenses relating to research sabotage usually attract stiffer punishment. In Bhrigu's case [53], where Ms. Bhrigu, a postdoctoral student at the University of Michigan, deliberately interfered with the research work of another student named Heather Ames by poisoning her cell-culture samples over some time. She was caught by a covert camera placed in the university lab. When arrested by university police, she denied committing an offense. She was subsequently arraigned at the Washtenaw County Courthouse and sentenced to a six-month probation period including 40 hours of community service. The court also ordered that she should be subjected to mental health evaluation. The court also ordered Ms. Bhrigu to pay about $8,800 for the reagents and experimental materials that were destroyed.

This case demonstrates the severity of sabotage in research ethics and the negative consequences it attracts. To address the issue of sabotage, academic and research institutions must pay adequate attention to the pressures associated with research settings and their effects on the individual researcher. This approach will assist enable academic institutions to save costs. It will also help in reducing the amount of material and financial resources to be spent on the investigation and prosecution of allegations of sabotage [54].

Consequences of Unethical Practices in Legal Research

The consequences of unethical research practices can be categorized as follows:

Social Consequences

Unethical research practices have severe social consequences for researchers, academic institutions, and society at large. It can affect the reputation and integrity of

the researcher, including his or her career prospects. It can also result in the loss of intellectual property and material benefits associated with a research project. Allegations of unethical practices may also have deleterious effects on academic and research institutions by eroding public trust and confidence in their ability to conduct quality and impactful research. Academic institutions can also be denied access to research grants and funding from both public and private sponsors due to research misconduct [55].

Legal Consequences

Acts of misconduct in research may potentially have legal repercussions. These repercussions include the initiation of legal action against academic institutions and individual researchers for unethical research activities. For instance, in the United States, public officials who approve study proposals that make use of fictitious investigators may face punishment and have their appointments terminated [56]. An allegation of unethical research practices can also lead to the revocation of research grants already granted to an academic institution. It can also jeopardize the prospects of accessing grants and research support.

Institutional Consequences

Individual researchers' unethical conduct can harm academic institutions as well. The loss of research funding from both governmental and private entities may be one of these outcomes. To find and punish those who engage in research misconduct, academic institutions can waste time, money, and other resources. A claim of unethical research practices can also impair the ability of research institutions to evaluate and assess scholarly performance.

Conclusion

This research has examined the ethical dilemmas associated with legal and socio-legal research methodologies. The findings of this research have revealed that ethical principles are an integral component of every research process including legal research because they assist in determining the integrity, objectivity, and reliability of research outcomes. Therefore, researchers must strive to adhere to those ethical norms in the process of conducting research for the interest of researchers, participants, and society.

Recommendations

In respect of the findings, the following are hereby recommended for implementation by researchers, academic institutions, and relevant stakeholders:

- Academic institutions should regularly organize training for legal researchers on the principles and significance of research ethics.
- Academic institutions should continuously update their research policies and guidelines to meet the realities of modern society arising from the use of the internet, Chart (Generative Pre-trained Transformer), commonly known as Chart GPT, and other technological research tools.
- Research institutions must ensure that research policies and guidelines include provisions on incentives to encourage and motivate researchers to conduct quality and impactful research that is useful to mankind.
- Academic and research institutions should establish and promote whistleblowing policies to curb the menace of unethical research practices and misconduct.
- Research ethics committees should be established at the faculty of law of Nigerian Universities to ensure that research works to comply with ethical norms governing the conduct of legal research.

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