

## IMPLEMENTATION OF RESTORATIVE JUSTICE IN HANDLING THE CRIME OF CORRUPTION COVID-19 AID FUND

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**Abstract:** The implementation of restorative justice (restorative justice) in the handling of corruption in the Covid-19 aid fund contained in Decision Number 8/Pid.Sus-Tpk/2021/PN.Jkt.Pst with the Defendant Harry Van Sidabukke, it can be seen that the panel of judges did not apply the concept of restorative justice. Because in its order, the Panel of Judges instead imposed a prison sentence of 4 (four) years on the Defendant. This means that the sanctions imposed by the judge still adopt the concept of retributive justice which focuses more on retaliation. The retaliation is manifested in the form of sentencing the Defendant. In addition, regarding the implementation of restorative justice in handling corruption cases of Covid-19 aid funds that need to be developed in Indonesian law enforcement, it is related to the provision of sanctions for the Defendant to focus more on recovering losses to state finances instead of focusing on retaliation. That is, in this case the application of the concept of restorative justice needs to be considered by the Panel of Judges so that the return of state losses becomes the main crime, not an additional crime. Because in the context of law enforcement in Indonesia, the restorative justice approach for corruption cases, both small-scale corruption and those that cause harm to state finances, has so far not been implemented. This is because the legal basis for the application of restorative justice for corruption cases in the internal prosecutor's office is not sufficient. This is because the current Attorney General'

**Keywords:** Restorative Justice, Corruption, Covid-19

## I. INTRODUCTION

Since it was determined that human-to-human transmission had occurred in Wuhan, China on December 31, 2019, the infection with Coronavirus-2019 (Covid-19) which caused severe acute respiratory syndrome-Coronavirus 2: SARS-Cov-2) became a global pandemic. The spread of Covid-19 cases as of March 13, 2021 reached 1.41 million confirmed positive cases, 1.24 million confirmed cases recovered, and 39,329 confirmed cases died. One of the regions in Indonesia that is also experiencing problems with the spread of Covid-19 is Central Java Province. Based on data from the Central Java Health Office as of March 12, 2021, there were 161,283 confirmed positive cases, 145,259 confirmed cases recovered and 10,137 confirmed cases died.

In order to stop the spread of Covid-19, the government has implemented Large-Scale Social Restrictions (PSBB). The impact of PSBB in an effort to break the chain of the spread of Covid-19 has caused Indonesia's economic growth to slow down. The Central Statistics Agency has recorded that economic growth in the first quarter (January-March) 2020 only grew 2.97%. This figure slowed from 4.97% in the fourth quarter of 2019. In fact, growth was far below the achievement of the first quarter of 2019 which reached 5.07% and in the second quarter of 2020 the rate of Indonesia's economic growth was minus 5.32%. This figure is inversely proportional to the second quarter of 2019 of 5.05%.<sup>1</sup>

Although many public facilities are closed, some vital sectors such as health facilities, markets or minimarkets remain open during the PSBB. Almost all activities were laid off, even most companies also laid off their employees.<sup>2</sup> Company data and the number of workers laid off during the Covid-19 pandemic are as follows:

**Table 1.** Data on layoffs throughout Indonesia as of April 7, 2020

<b>Sector</b>	<b>Number of Companies that Lay off workers IPHK</b>	<b>Number of Workers Laid Off/PHK</b>
Formal	39,977	1,010,579
Informal	34,453	189,452
Total	74.430	1,200,031

Source: Ministry of Manpower, 2020

The most workers who were laid off and laid off came from the formal sector, where as many as 1,010,579 workers were laid off and laid off by a total of 39,977 companies. Meanwhile, 189,452 informal sector workers were laid off and laid off by 34,453 companies. The government should note that victims of layoffs and being laid off have no source of income for an indefinite period, at least until the economy begins to recover. With no income, this group is vulnerable to fall into the category of the poor. To overcome this situation, the government has issued a policy to provide social assistance in handling Covid-19.

This is where the government plays a role through a variety of Social Safety Net (JPS) programs which include the Family Hope Program (PKH), Pre-Employment Cards, Basic Food Cards, Electricity Subsidies, and Cheap Housing Incentives. The Ministry of Finance announced an economic stimulus to deal with the impact of the spread of Covid-19 in Indonesia through the APBN allocation of IDR 405.1 trillion. In the budget, there is an allocation for JPS of Rp. 110 trillion. The government increases the budget allocation for each social assistance program, in line with the increase in the number of poor households.<sup>3</sup>

<sup>1</sup>Wuryandani, D., "The Impact of the Covid-19 Pandemic on Indonesia's 2020 Economic Growth and Solutions. Brief Info: A Brief Study of Actual and Strategic Issues". Journal of Economics, Volume XII, Number 15, August 2020.

<sup>2</sup>Nasruddin, R., and Haq, I., "Large-Scale Social Restrictions (PSBB) and Low-Income People", Syar-I Social & Cultural Journal, Volume 7, Number 7, July 2020.

<sup>3</sup>Barany, LJ, Simanjuntak (et.al), "Socio-economic assistance in the midst of the Covid-19 pandemic: have you captured the target?" CSIS Commentaries ECON-002-ID, 2020.

In practice, the government's efforts to provide social assistance in handling Covid-19 are still colored by the disgraceful behavior of authorized officials. Such is the case with allegations of corruption involving the Minister of Social Affairs Juliari Peter Batubara in the distribution of social assistance (bansos) Covid-19 which incidentally is a disaster management fund. Minister of Social Affairs Juliari Peter Batubara, who was named a suspect by the KPK, after holding a hand arrest operation (OTT).

The author reviews the Decision Number: 8/Pid.Sus-Tpk/2021/PN.Jkt.Pst with the Defendant Harry Van Sidabukke. Harry Van Sidabukke was charged with Article 5 paragraph (1) letter b of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law of the Republic of Indonesia Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption Juncto Article 64 paragraph (1) of the Criminal Code. Or Article 13 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law of the Republic of Indonesia Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption Juncto Article 64 paragraph (1) of the Criminal Code.

## II. RESEARCH METHODS

In this study, the type of research used is normative legal research/normative juridical law research. This study was conducted to identify the application of restorative justice in the corruption crime of Covid-19 aid funds in the criminal justice system in Indonesia.

This research is included in the type of normative juridical research. For that, the data used is secondary data. The secondary data consists of three legal materials, namely primary legal materials, secondary legal materials and tertiary legal materials. In this study, two legal materials were used, including the following:

### a. Primary Legal Material

Namely binding legal materials, which consist of various kinds of regulations, laws and other regulations, which include:

- 1) Pancasila;
- 2) the 1945 Constitution of the Republic of Indonesia;
- 3) the Criminal Code;
- 4) Law Number 19 of 2019 concerning the Second Amendment to Law Number 30 of 2002 concerning the Corruption Eradication Commission;
- 5) Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption.
- 6) Regulation of the Attorney General's Office of the Republic of Indonesia Number 15 of 2020 concerning Termination of Prosecution Based on Restorative Justice; and
- 7) Regulation of the State Police of the Republic of Indonesia Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice.

### b. Secondary Legal Material

Secondary materials, namely legal materials that provide an explanation of primary legal materials sourced from literature, papers, documents, and scientific writings related to restorative justice and related to corruption in the covid-19 aid fund.

## III. RESULTS AND DISCUSSION

### 1. Implementation of Restorative Justice in Handling Corruption Crimes Covid-19 Aid Funds

*Restorative Justice* emerged as a reaction to the concept of retributive justice which focuses more on retaliation for a criminal act committed by the perpetrator of a crime. The retaliation is manifested in the form of punishment of the perpetrators of criminal acts. In

Satjipto Rahardjo's opinion, a case settlement through the judicial system that leads to a court verdict is a law enforcement towards the slow lane.<sup>4</sup> Thus, restorative justice is seen as a better and more efficient way of resolving a case compared to retributive justice.

Luhut MP Pangaribuan stated that in its development, the settlement of a criminal case is no longer through imprisonment because it is a manifestation of revenge and at the same time a burden to the state, but rather restores the relationship between the perpetrator, the victim and the community.<sup>5</sup>

*Restorative justice* prioritize the settlement of cases outside the court by means of mediation to resolve a criminal case. The perpetrator of the crime will recover and bear all the losses suffered by the victim of the crime. So that if the loss has been fully recovered by the perpetrators of the crime, then between the perpetrators of the crime and the victims of the crime there has been peace and there will be no more conflict.

In 2016 the Constitutional Court issued Decision Number 25/PUU-XIV/2016 whose decision changed the formal offense in Article 2 paragraph (1) and Article 3 of Law Number 20 of 2001 concerning the Eradication of Corruption Crimes into a material offense. CST Kansil stated that material offenses are offenses whose formulation focuses on the consequences that are prohibited and are threatened with punishment by law, while formal offenses are offenses whose formulation focuses on actions that are prohibited and are threatened with punishment by law.<sup>6</sup>

By changing the formal offense to a material offense, it means that the element of harming state finances is no longer understood as an estimate (potential loss), but must be understood to have actually occurred or is real (actual loss) in corruption.<sup>7</sup> Thus, it can be examined that a person can be said to have committed a criminal act of corruption and can be subject to criminal sanctions if the person's actions have clearly caused significant financial losses to the state or the country's economy.

The main target of Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption is to recover state financial losses. Law enforcement officials are expected to be able to identify cases of criminal acts of corruption that are considered detrimental to state finances so that they can be resolved through out-of-court settlements, by calculating the comparison of the value of operational funds for handling cases with the value of state financial losses.<sup>8</sup>

The application of restorative justice needs to be accommodated to evaluate the weaknesses of the retributive justice approach as it has existed and is in effect.<sup>9</sup> Marwan argues that restorative justice can be used in corruption crimes, unlike restorative justice in general crimes which must involve the involvement of victims, perpetrators and the community, related to corruption issues that focus on restoring state losses.<sup>10</sup>

As described in the previous chapter, Didik Endro Purwoleksono stated that if all the proceeds of a criminal act of corruption were returned by the suspect or defendant, it could essentially be used as a factor that erases the nature of being against the criminal law, namely

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<sup>4</sup>Henny Saida Flora, "Restorative Justice as an Alternative in the Settlement of Criminal Acts and Its Influence in the Indonesian Judicial System", *Ubelaj Journal*, Volume 3, Issue 2, 2018, p. 2.

<sup>5</sup>Luhut MP Pangaribuan, , *Lay Judges & Ad Hoc Judges: A Theoretical Study of the Indonesian Criminal Justice System*, University of Indonesia Press, Jakarta, 2009, p. 257.

<sup>6</sup>CST Kansil and Christine ST Kansil, *Fundamentals of Criminal Law – Criminal Law for Everyone*, Pradnya Paramita, Jakarta, 2007, p. 40.

<sup>7</sup>Ibid

<sup>8</sup>Ibid

<sup>9</sup>Budi Suhariyanto, *Restorative Justice in the Criminalization of Corporate Corruption Perpetrators for Optimizing the Return of State Losses*, *Rechtsvinding Journal*, Volume 5, Number 3, 2016, p. 432.

<sup>10</sup>Ibid

the crime of corruption so that the suspect or defendant does not need to be convicted.<sup>11</sup> There are 3 (three) elements or conditions that cause the loss of the unlawful nature of a criminal act of corruption, namely:

- 1) the suspect or defendant does not benefit;
- 2) the state is not harmed;
- 3) community served.<sup>12</sup>

Based on this explanation, it can be concluded that if the perpetrator of a criminal act of corruption has returned all the proceeds of the criminal act of corruption along with all the profits derived from the proceeds of the criminal act of corruption by the perpetrator of a criminal act of corruption, then basically the perpetrator does not benefit, the state does not suffer financial losses and the public can be served through the return of all proceeds of corruption and all the profits. The purpose of the community being served is that the state can build facilities that are useful to the wider community by returning all the proceeds of corruption along with all the profits.

If the perpetrator of a criminal act of corruption only returns a portion of the proceeds from a criminal act of corruption, the perpetrator will still benefit from the criminal act of corruption he has committed and the state will still be harmed and the community will not be served. So that the return of the proceeds of a criminal act of corruption which is only partially cannot eliminate its unlawful nature. The return of the proceeds of a criminal act of corruption must be returned by the perpetrator of a criminal act of corruption in its entirety in order to eliminate the unlawful nature of the perpetrator. The return of all proceeds of criminal acts of corruption along with the profits obtained by the suspect or defendant has the following consequences:

- 1) does not cause victims and/or losses, in which case there is no state loss;
- 2) there are other means that are more effective and with less losses in tackling acts that are considered despicable, in this case the state does not need to spend more money to process, convict, and provide food and drink to convicts of corruption.<sup>13</sup>

So that with the implementation of restorative justice in criminal acts of corruption in the form of returning all proceeds of corruption by perpetrators of corruption, it can be said that it is more profitable for the state. With the implementation of restorative justice, the state is not burdened with finances to process and feed the perpetrators of corruption who are detained or convicted, and if the retributive justice model is applied, it is feared that the perpetrators of criminal acts of corruption will tend to choose to undergo a substitute punishment in the form of imprisonment rather than paying losses to the perpetrators' country. This of course is increasingly detrimental to the country.

Didik Endro Purwoleksono argues that the application of restorative justice in the form of returning all proceeds of corruption can be done when:

- 1) prior to conducting an investigation;
- 2) at the time of the investigation;
- 3) at the time of the investigation; and
- 4) during examination before the court.<sup>14</sup>

By returning all the proceeds of a criminal act of corruption obtained by the perpetrator, it can eliminate the element of *mens rea* or malicious intent in the perpetrator, so that if the perpetrator returns all the results of a criminal act of corruption at the investigation level, the investigator can state that the case cannot be escalated to the investigation stage, while at the

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<sup>11</sup>Didik Endro Purwoleksono, *Thought String Criminal Law*, Airlangga University Press, Surabaya, 2016, p. 188.

<sup>12</sup>*Ibid.*

<sup>13</sup>*Ibid.*, p. 192

<sup>14</sup>*Ibid.*

level of investigation, the investigator may issue an Order for Termination of Investigation (SP3). One of the reasons for the issuance of SP3 based on Article 109 of the Criminal Procedure Code is that it is not a crime. The return of all proceeds of the criminal act of corruption by the perpetrator has the consequence of losing the unlawful nature of the perpetrator of the criminal act of corruption and thus it can be said that the case is not a case of a criminal act of corruption.

Furthermore, at the trial stage, Didik Endro Purwoleksono was of the opinion that the return of all proceeds of the criminal act of corruption along with all the profits obtained by the defendant during the examination in court, this can be a court decision to release the defendant from all lawsuits or *onslag van recht vervolging*.<sup>15</sup>

This is in accordance with the provisions of Article 191 paragraph (2) of the Criminal Procedure Code, with the return of all proceeds of a criminal act of corruption by the perpetrator causing the consequence of the loss of the unlawful nature of the perpetrator of the criminal act of corruption, then what was indicted by the public prosecutor was indeed proven, but due to the unlawful nature of the criminal act of corruption. If the perpetrator is missing, the case is not a criminal act of corruption, then the court's decision is in the form of being free from all lawsuits or *onslag van recht vervolging*, not *vrijspraak*.<sup>16</sup> Thus, the application of restorative justice in criminal acts of corruption in the form of returning all proceeds of corruption can be carried out at the stage before the investigation, during investigation and investigation, even during examination in court.

The concept of restorative justice does not completely eliminate criminal sanctions, but rather prioritizes the provision of sanctions that emphasize efforts to recover from crimes. In the context of corruption, the focus of legal attention should be on how to restore the state losses incurred by law rather than prioritizing the deprivation of the perpetrator's freedom. According to Yusona Piadi, there are at least 2 (two) forms of punishment for perpetrators of criminal acts of corruption that can be applied according to the restorative justice approach, namely: first, recovery of state losses in the form of returning state financial losses; second, punishment in the form of forced labor for perpetrators of corruption whose proceeds are confiscated for the state.<sup>17</sup>

However, the concept of restorative justice has not been fully implemented in the regulation. This is because Law Number 31 of 1999 as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning the Eradication of Criminal Acts of Corruption stipulates that in cases that are decided, there is a time limit for payment of one month, if not If the prosecutor does not pay the replacement money, the confiscated property can be auctioned to cover the replacement money, the amount of which is in accordance with the court's verdict which has permanent legal force, and if the convict does not have sufficient assets to pay the replacement money, he will be punished in the form of imprisonment for which the convict is serving the duration of which does not exceed the principal sentence. This norm again shows that the return of state losses is only as an additional crime, not as a principal crime. Moreover, if the convict is unable to recover the state's losses, the solution is to put the convict in prison other than he must serve the main prison sentence.

In this case, the concept of restorative justice needs to be considered so that the return of state losses becomes the main crime. Because if the compensation for state losses remains an additional crime, there is still an opportunity for the judge to decide on a subsidiary sentence or a substitute imprisonment if the convict is unable to recover the loss.

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<sup>15</sup>Ibid.

<sup>16</sup>Ibid.

<sup>17</sup>Yusona Piadi, "Implementation of Restorative Justice in the Criminalization of Criminal Acts of Corruption", *Rechten Journal: Legal and Human Rights Research*, Volume 1, Number 1, 2019, p. 5

In the lens of restorative justice, if the convict is unable to recover the loss even though all his assets have been auctioned off, it is better for the state to empower the perpetrators of corruption in the form of forced labor according to their expertise. Because basically the perpetrators of corruption are people who have good skills. The results of the forced labor are confiscated by the state to cover state losses that the convict cannot afford.

In this study, if analyzed from Decision Number 8/Pid.Sus-Tpk/2021/PN.Jkt.Pst with the Defendant Harry Van Sidabukke, it can be seen that the panel of judges did not implement the concept of restorative justice in handling criminal acts of corruption in funds. Covid-19 assistance. Because in its order, the Panel of Judges instead imposed a prison sentence of 4 (four) years on the Defendant. This means that the sanctions imposed by the judge still adopt the concept of retributive justice which focuses more on retaliation. The retaliation is manifested in the form of sentencing the Defendant.

In fact, the actions committed by the Defendant if examined can actually be included in the formal requirements for obtaining restorative justice in accordance with the contents of Article 6 of the State Police Regulation Number 8 of 2021 concerning Handling of Crimes Based on Restorative Justice, namely the fulfillment of the rights of victims. and the responsibility of the Defendant to return the goods; indemnify; replace the costs incurred as a result of the Crime; and/or replace the damage caused by the Crime. Fulfillment of rights is proven by a statement letter in accordance with the agreement signed by the victim.

However, the problem is, if it is applied to a criminal act of corruption, this restorative justice will be very difficult to carry out, especially the actions carried out by the Defendant directly involve the affected community, namely the crime of corruption in the Covid-19 aid fund. The obstacle lies not only in law enforcement but in the community as well. It is very difficult for the public to forgive the actions of the Defendant, unless the Defendant can truly compensate for all losses and return them to the state and the entire affected community.

Apart from these difficulties, law enforcement officers can apply restorative justice in the form of returning state losses to be the principal crime. Because if the compensation for state losses remains an additional crime, there is still an opportunity for the judge to decide on a subsidiary sentence or a substitute imprisonment if the convict is unable to recover the loss. In the lens of restorative justice, if the convict is unable to recover the loss even though all his assets have been auctioned off, it is better for the state to empower the perpetrators of corruption in the form of forced labor according to their expertise. Because basically the perpetrators of corruption are people who have good skills.

## **2. Implementation of Restorative Justice in Handling Corruption Crimes Covid-19 Aid Funds that Need to be Developed in Indonesian Law Enforcement**

In the context of eradicating corruption, it is possible that the application of restorative justice can be applied to perpetrators of corruption whose actions are not related to state financial losses or related to state financial losses, but with a small nominal loss. The approach to financial instruments that has been carried out so far is to change the pattern of approach from follow the suspect to follow the money and follow the assets, as well as impoverishing corruptors by confiscation of corruptors' assets through asset tracing in order to recover state financial losses, so that law enforcement is not only criminalizing the body but also recover state financial losses to the fullest. Through a financial instrument approach,

The legal system for eradicating criminal acts of corruption enforced by law enforcement officials is currently still fixated on repressive actions in the offenses of Article 2 and Article 3 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 Meanwhile, there are about 30 types of corruption in the Corruption Eradication Law which can be grouped into seven forms of corruption, and there are also six other forms of acts related to corruption.

Not all types of corruption are related to state financial losses. With the different types of corruption, the mechanism for applying the law should also be done differently. It is inappropriate if offenses that are not related to state financial losses, apply a legal process related to state financial losses. Law enforcement must be proportionate and professional as the meaning of the scale symbol which is a symbol of justice. For criminal acts of corruption that are related or not related to state financial losses with a relatively small nominal loss, for example below Rp. 50 million, then it should be a subject of joint discussion.

Handling corruption cases from the investigation process to execution is not cheap. The state bears the cost of up to hundreds of millions of rupiah to resolve a corruption case. This is certainly not comparable between operational costs and the results of corruption crimes committed by the perpetrators, aka the stake rather than the pillar. Although the rise of illegal extortion is very disturbing to the public and often results in high economic costs in the industrial sector or the production sector, its eradication should not create a financial burden on the state's finances. For example, the handling of corruption cases in Eastern Indonesia, where the examination and trial processes must be carried out by land, sea and air.

However, handling small-scale corruption cases is also not an achievement to be proud of, and sometimes even tends to be unacceptable to the public. Public trust in law enforcement can actually decrease because the quality of handling cases carried out is only at the level of anchovy and finally law enforcement officers are considered unable to fight high-profile corruptors. Basically, the state as a victim has the capacity to punish perpetrators by using other mechanisms or instruments outside of prison sanctions. Of course, an instrument that has the principles of justice, but is economical because the state actually loses more if it has to punish the perpetrators until they go to prison. If forced,<sup>18</sup>

If analyzed based on the case of Decision Number 8/Pid.Sus-Tpk/2021/PN.Jkt.Pst with the Defendant Harry Van Sidabukke, the implementation of restorative justice in handling corruption cases of Covid-19 aid funds that need to be developed in Indonesian law enforcement is related to the provision of sanctions for the Defendant to focus more on recovering losses to state finances instead of focusing on retaliation. That is, in this case the application of the concept of restorative justice needs to be considered by the Panel of Judges so that the return of state losses becomes the main crime, not an additional crime. Because in the context of law enforcement in Indonesia, the restorative justice approach for corruption cases, both small-scale corruption and those that cause harm to state finances, has so far not been implemented. This is because the legal basis for the application of restorative justice for corruption cases in the internal prosecutor's office is not sufficient. This is because the current Attorney General's Regulation does not regulate corruption as a case that can be resolved through restorative justice.

#### **IV. CONCLUSION**

The implementation of restorative justice (restorative justice) in the handling of corruption in the Covid-19 aid fund contained in Decision Number 8/Pid.Sus-Tpk/2021/PN.Jkt.Pst with the Defendant Harry Van Sidabukke, it can be seen that the panel of judges did not apply the concept of restorative justice. Because in its order, the Panel of Judges instead imposed a prison sentence of 4 (four) years on the Defendant. This means that the sanctions imposed by the judge still adopt the concept of retributive justice which focuses more on retaliation. The retaliation is manifested in the form of sentencing the Defendant.

The implementation of restorative justice in handling corruption cases of Covid-19 aid funds that need to be developed in Indonesian law enforcement is related to the provision of sanctions for the Defendant to focus more on recovering losses to state finances instead of

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<sup>18</sup>Ibid



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