

Legal Protection of Health Workers Who Experience Violence from Patients and Their Families in the Time of the Covid-19 Pandemic

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DOI: <http://dx.doi.org/10.51825/nhk.v5i1.14288>

Article Info:

| Submitted: 23 February 2022 | Revised: 13 June 2022 | Accepted: 14 June 2022

Recommended Citation: *Chicago Manual of Style 17th edition (full note)*

Eddy Rifai, Nurul Purna Mahardika, Arini Weronica, Husna Purnama, Nila Sari Dewi, "Legal Protection of Health Workers Who Experience Violence from Patients and Their Families in the Time of the Covid-19 Pandemic", *Jurnal Nurani Hukum : Jurnal Ilmu Hukum*, Vol. 5 No. 1, (June, 2022)", P.12-22

ABSTRACT

Along with the number of deaths among health workers during the COVID-19 pandemic, violence against health workers also often occurs. This shows that there is a need for an analysis related to legal protection for health workers. The problems that will be discussed in this research are: What are the legal provisions related to protection for health workers during the COVID-19 pandemic? And what about legal protection for health workers who experience violence The research method uses a normative juridical approach with qualitative analysis. The results of the study indicate that legal protection is an effort to maintain the rights of individuals or groups that can be fulfilled from strong or powerful parties such as the government or businessmen and other parties for the creation of security and public order. Legal protection for health workers is regulated in Article 57 of Law no. 36 of 2014 concerning Health Workers. Meanwhile, health workers who have been attacked have been protected and regulated in Articles 170 and 351 of the Criminal Code.

Keywords: *Legal Protection, Health Workers, Covid-19 Pandemic.*

ABSTRAK

Seiring dengan banyaknya kematian di kalangan tenaga kesehatan selama pandemi COVID-19, kekerasan terhadap tenaga kesehatan juga kerap terjadi. Hal ini menunjukkan perlu adanya analisis terkait perlindungan hukum bagi tenaga kesehatan. Permasalahan yang akan dibahas dalam penelitian ini adalah: Apa saja ketentuan hukum terkait perlindungan tenaga kesehatan selama masa pandemi COVID-19? Dan bagaimana perlindungan hukum bagi tenaga kesehatan yang mengalami kekerasan. Metode penelitian menggunakan pendekatan yuridis normatif dengan analisis kualitatif. Hasil penelitian menunjukkan bahwa perlindungan hukum merupakan upaya untuk menjaga hak-hak individu atau kelompok yang dapat dipenuhi dari pihak yang kuat atau berkuasa seperti pemerintah atau pengusaha dan pihak lain demi terciptanya keamanan dan ketertiban masyarakat. Perlindungan hukum bagi tenaga kesehatan diatur dalam Pasal 57 UU No. 36 Tahun 2014 tentang Tenaga Kesehatan. Sedangkan tenaga kesehatan yang diserang telah dilindungi dan diatur dalam Pasal 170 dan 351 KUHP.

Kata Kunci: Perlindungan Hukum, Tenaga Kesehatan, Pandemi Covid-19

Introduction

The SARS-CoV-2 (covid-19) virus was first detected in China in late 2019 and has spread worldwide.¹ By June 2021, the COVID-19 virus caused more than 178 million confirmed cases and 3.9 million deaths.² Some The initial cases were linked to a wet market in Wuhan City, where the first cluster of COVID-19 infections was recorded. Over the past few months, scientists have reached a broad consensus that the virus spreads as a result of "zoonotic spillover" or "virus that jumps" from infected animals to humans, before becoming highly human-to-human.³

The entry of the virus is very likely to occur through gates in several parts of Indonesia. Since January when this new type of corona virus was announced it can be transmitted between humans, and has colonized in various countries other than Wuhan in China. The Indonesian government does not immediately close access to direct flights to and from Wuhan, which is around six airports. These include Batam, Jakarta, Denpasar, Manado, Makassar.⁴

On March 31, 2020 the government issued a Government Regulation of the Republic of Indonesia. No. 21 of 2020 concerning Large-Scale Social Restrictions in the Context of Accelerating the Handling of Corona Virus Disease 2019 (Covid-19) (PP No. 21 of 2020). PP

No. 21 of 2020 is an implementing regulation of several existing laws and regulations such as: Law Number 4 of 1984 concerning Infectious Disease Outbreaks (Law No. 4 of 1984); Law No. 24 of 2007 concerning Disaster Management (Law No. 24 of 2007); Law Number 6 of 2018 concerning Health Quarantine (Law No. 6 of 2018).⁵

Through some of the laws and regulations above, the government establishes policies and measures to deal with COVID-19, both in terms of financing, procurement of facilities and infrastructure, vaccinations and law enforcement against law violators. The existence of covid-19 has resulted in 157,000 people died in Indonesia.⁶

A total of 1,697 are health workers, both doctors and nurses.⁷ The large number of health workers who died because health workers were dealing directly with patients with COVID-19, in which case there were obstacles and lack of facilities such as personal protective equipment (PPE), medical equipment and the presence of parties who committed violence against health workers as happened. in Lampung, Medan, Garut, Aceh and other areas.

In the case of Lampung, a Kedaton Public Health Center nurse named Rendy Kurniawan (26) was beaten by three of the patient's family on Sunday which left him with bruises on his face, head and neck⁸,

¹ Yi Chi Wu, Ching Sung Chen, and Yu Jiun Chan, "The Outbreak of COVID-19: An Overview," *Journal of the Chinese Medical Association*, 2020, <https://doi.org/10.1097/JCMA.0000000000000270>

² Tati Nuryati Mirnawati Hi.Hamjah, Pradnya Paramita, "Analysis of Adolescent Compliance Factors Implementing The Covid-19 Health Protocol in North Ternate High School in 2021," *Jurnal Inovasi Penelitian* 2, no. 8 (2022): 2647-55.

³ Kenji Mizumoto, Katsushi Kagaya, and Gerardo Chowell, "Effect of a Wet Market on Coronavirus Disease (COVID-19) Transmission Dynamics in China, 2019-2020," *International Journal of Infectious Diseases*, 2020, <https://doi.org/10.1016/j.ijid.2020.05.091>.

⁴ Ellyvon Pranita, "Diumumkan Awal Maret, Ahli: Virus Corona Masuk Indonesia Dari Januari," *www.kompas.com*, 2020.

⁵ Muhamad Beni Kurniawan, "Politik Hukum Pemerintah Dalam Penanganan Pandemi Covid-19 Ditinjau Dari Perspektif Hak Asasi Atas Kesehatan," *Jurnal HAM* 12, no. 1 (April 22, 2021): 37, <https://doi.org/10.30641/ham.2021.12.37-56>.

⁶ Satuan Tugas Penanganan COVID-19, "Covid 19 Indonesia Official Website," 2022.

⁷ Kompas.Com, "Hingga Akhir Agustus 2021, 1.967 Tenaga Kesehatan Di Indonesia Meninggal Akibat Covid-19," *Kompas*, 2021, www.kompas.com.

⁸ Tribunnews.Lampung, "Fakta Perawat Dianiaya Di Lampung, Pelaku Ngaku Keluarga

while in Medan several nurses and doctors at the Balige HKBP Hospital persecuted by a group of people. The same thing happened in Garut, Aceh and several other areas.⁹

Along with the number of deaths among health workers during the COVID-19 pandemic, violence against health workers also often occurs. This shows that there is a need for an analysis related to legal protection for health workers. The problems that will be discussed in this research are: What are the legal provisions related to protection for health workers during the COVID-19 pandemic? And what about legal protection for health workers who experience violence?

Methodology

This research uses normative juridical research. Primary data is obtained by using legal materials and secondary data obtained from primary legal materials, secondary legal materials, and tertiary legal materials. Furthermore, the data obtained for analysis purposes will first be identified according to the research objective group.

Discussion

1. Legal Protection of Health Workers in the Time of The Covid-19 Pandemic

A health worker is every person who devotes himself to the health sector and has knowledge and/or skills through education in the health sector which for certain types requires the authority to carry out health efforts. Health Workers are regulated in the Law of the Republic

of Indonesia Number 36 of 2014 concerning Health Workers (Law No. 36 of 2014). This statutory regulation is the implementation of the provisions of Article 21 Paragraph (3) of Law No. 36 of 2009 concerning Health (Law No. 36 of 2009).¹⁰

Various problems arose for health workers during the COVID-19 pandemic. All health workers are compared to health workers who are facing tremendous stress due to COVID-19, especially those related to suspected or confirmed cases, due to the high risk of infection, inadequate protection, lack of experience in controlling and managing disease, long working hours, longer duration, negative feedback from patients, emerging stigma, and lack of social support from the surrounding environment.¹¹

During the COVID-19 pandemic, health workers are at the forefront of handling positive patients with corona virus infection. In such a task that makes them a group that is also vulnerable to infection. Therefore, the mention of being the frontline in handling Covid-19 as a consequence of health workers directly dealing with patients exposed to Covid-19.

Here, Health workers are very susceptible to the amount or dose of virus that enters the body when they are dealing with positive patients. Therefore, it is important for health workers to use complete Personal Protective Equipment (PPE) when dealing with patients related to Covid-19, especially those in isolation rooms. In addition, it is also important to maintain health and provide more

Pejabat Hingga Ngotot Bawa Tabung Oksigen," 2021, www.tribunnews.lampung.com.

⁹ Tirto.id, "Kekerasan Pada Nakes Yang Terus Berulang Saat Pandemi COVID-19," Tirto ID, 2022, <https://tirto.id/kekerasan-pada-nakes-yang-terus-berulang-saat-pandemi-covid-19-gheB>.

¹⁰ Harif Fadhilah, Endang Endang Wahyati, and Budi Sarwo, "Pengaturan Tentang Tenaga Kesehatan Dalam Peraturan Perundang-

Undangan Dan Azas Kepastian Hukum," *SOEPRA*, 2019, <https://doi.org/10.24167/shk.v5i1.1653>.

¹¹ Aziz Yogo Hanggoro et al., "Dampak Psikologis Pandemi Covid-19 Pada Tenaga Kesehatan: A Studi Cross-Sectional Di Kota Pontianak," *Jurnal Kesehatan Masyarakat Indonesia*, 2020, <https://doi.org/10.26714/jkmi.15.2.2020.13-18>.

training, related to handling the corona virus for health workers and hospital workers. This is because they are at the forefront of patient care¹².

The study of legal protection can be drawn from several opinions of legal experts as follows: Satjipto Rahardjo states: Legal protection is an effort to protect a person's interests by allocating a human right to power to him to act in the context of his interests.

Setiono stated: Legal protection is an act or effort to protect the public from arbitrary actions by authorities that are not in accordance with the rule of law, to create order and peace so as to enable humans to enjoy their dignity as human beings.

Muchsin stated: Legal protection is an activity to protect individuals by harmonizing the relationship of values or rules that are manifested in attitudes and actions in creating order in the social life between fellow human beings.

Philipus M. Hadjon stated: It is always related to power. There are two kinds of government power and economic power. In relation to government power, the problem of legal protection is for the people (who are governed), against the government (which governs)¹³.

Based on the opinions above, it can be said that legal protection is primarily aimed at individuals and groups in society from arbitrary actions by stronger parties such as the government or employers against workers or other parties in the context of realizing security and order public.

The regulation of legal protection for health workers is contained in Article 57 of Law no. 36 of 2014 which states that health workers in carrying out their practice have the right to:

- 1) Obtain legal protection as long as carrying out duties in accordance with professional standards, professional service standards, and standard operating procedures;
- 2) Obtain complete and correct information from health service recipients or their families;
- 3) Receive service fee;
- 4) Obtain protection for occupational safety and health, treatment in accordance with human dignity, morals, decency, and religious values;
- 5) Get the opportunity to develop their profession;
- 6) Refuse the wishes of the recipient of health services or other parties that are contrary to professional standards, codes of ethics, service standards, standard operating procedures, or provisions of laws and regulations; and
- 7) Obtain other rights in accordance with the provisions of the legislation.

In this period of the COVID-19 pandemic, health workers should receive more adequate medical facilities and infrastructure, such as personal protective equipment (PPE), increased remuneration and others.

Health workers also experience occupational safety protection from certain parties, such as neglect of health protocols, refusal of vaccinations, and acts of violence by patients and their families.

2. Legal Protection for Health Workers Who Experience Violence from Patients and Their Families

Besides being vulnerable to COVID-19 infection due to the lack of Personal Protective Equipment, health workers also experience psychosocial issues, such as stigmatization and discrimination from

¹² Theresia Louize Pesulima and Yosia Hetharie, "Perlindungan Hukum Terhadap Keselamatan Kerja Bagi Tenaga Kesehatan Akibat

Pandemi Covid-19," *SASI*, 2020, <https://doi.org/10.47268/sasi.v26i2.307>.

¹³ Asri Wijayanti, *Hukum Ketenagakerjaan Pasca Reformasi* (Sinar Grafika, 2009).

certain groups in society. Not even a few health workers have been refused or asked to move from their rental homes for handling COVID-19 patients.

In addition, the bodies of health workers who will be buried in public cemeteries are rejected by the local community. It is also difficult for health workers to obtain social support due to their busy work schedule and having to live separately from their families while dealing with COVID-19 patients.¹⁴

These various social obstacles experienced by health workers became one of the attacking factors experienced by health workers during the COVID-19 pandemic. Violence by patients and their families can be subject to Article 170 and 351 of the Criminal Code.

Article 170 paragraph (1) of the Criminal Code the elements are: (1) whoever; (2) blatantly; (3) with joint power; (4) using force; and (5) against people or goods.

1). The element of whoever/they:

Mr. H.J. Smidt (in by PAF Lamintang, 1986), states *Zij* or *them*, this means that those who can be sentenced according to the criminal provisions regulated in article 170 paragraph (1) of the Criminal Code are "a lot of people", meaning people who have participated in the crime. take part in acts of violence against people or property that are carried out openly and collectively. But this does not mean that everyone who takes part in such riots can be punished. Those who can be punished are only those who have actually participated in committing such acts themselves. The fact that a person is in the midst of a crowd that commits violence against people or property does not in itself make that person liable to be convicted.

SR. Sianturi, 1989, stated: The subject here is anyone. In the original language it is "*Zij*", not "*hij*". However, this offense cannot be carried out by only one person, although in the event of a consequence as mentioned in paragraph (2), only one person may be held criminally responsible based on paragraph (2). In this case, for the rest who do not participate in "causing" the result, paragraph (1) is applied. Therefore, the question becomes, how many people should be acted upon to fulfill the element of the subject matter of this offense?

Some scholars argue that it is not enough just two people. The reason, among other things, is that the term "with collective power" indicates a crowd of people. Then it was added that if two subjects were deemed to have fulfilled the elements of the subject matter of this offense, why not just use the term "two or more people" which is familiar in the terminology of criminal law? see among others Articles 167, 168, 363, 365, etc. While other scholars (among others: Noyon) argue that this subject has met the requirements if there are two (or more) people.

Furthermore, it is important to note that the making of this offense according to his explanation (*memorie van toelichting*) is not directed at groups, masses, groups of people who do not participate in the violence. This offense is only aimed at people among these groups who really openly and collectively carry out the violence.

2) Openly

Prof. Mr. D. Simons (in PAF Lamintang, 1986), because Article 170 paragraph (1) of the Criminal Code does not provide any restrictions on the meaning of the word *openlijk geweld* or

¹⁴ Christa Gumanti Manik, Sri Mardikani Nugraha, and Maya Ryandita, "Kebijakan Perlindungan Tenaga Kesehatan Dalam Menghadapi Coronavirus Disease 2019 (COVID-

19) Di Indonesia," *Jurnal Penelitian Dan Pengembangan Pelayanan Kesehatan*, 2020, <https://doi.org/10.22435/jpppk.v4i2.3274>.

violence that is carried out openly itself, then any violence if it is carried out openly and carried out together with many people, can be included in its meaning.

Furthermore, it has been said by Prof. Simons, that by paying attention to the history of the formation of this article and by taking into account its placement in Chapter V of Book II of the Criminal Code, Hoge Raad is of the opinion that what can be included in the meaning of *openlijk geweld* according to Article 170 paragraph (1) of the Criminal Code is only "violence that disturbs public order", on the grounds that these requirements can be known from the word *openlijk* or *openly* in the formulation of Article 170 paragraph (1) of the Criminal Code itself.

On the other hand Prof. van Hamel has intended to limit the meaning of the word violence based on the fact that the act must be carried out openly, so what is meant by *openlijk geweld* or *open violence* is only violence that can be seen by everyone.

Prof. Mr. G.A. van Hamel (in P.A.F. Lamintang, 1986) What is meant by *openlijk geweld* or *open violence* is only violence that can be seen by everyone.

Prof. Mr. T.J. Noyon - Prof. Mr. G.E. Langemeijer (in P.A.F. Lamintang, 1986) turned out to have the same opinion as the opinion of Prof. van Hamel about the word *openlijk geweld* mentioned above. About this said Prof. Noyon-Langemeijer stated that: "Violence must be carried out openly, meaning that it must be visible to the public. Such violence does not need to be done in a public place.

The law makes a distinction between the two words. Thus, violence can also be carried out at home, but in order to be punished, the act must be visible to the public. Even so, that the word *openlijk* also needs to be limited in such a way, so that not every violence that can actually be seen by the public, but which in reality is not visible to the public must also be

included in the meaning of *openlijk geweld* or violence carried out openly.

Decision of the Supreme Court of the Republic of Indonesia No. 10 K/Kr/1975 dated 17-3-1976: *Openlijk* in the original article 170 *Wetboek van Strafrecht* is more accurately translated "openly", which term has a different meaning from *openbaar* or "in public". "Obviously" means not in secret, so it doesn't need to be in public, just if it's not needed or there is a possibility that other people can see it.

3) With energy together/together

PAF Lamintang, 1986 states: Both from the law and from jurisprudence, it turns out that there is no explanation about what is actually meant by the word *met verenigde krachten* or "together", so we have to look into the doctrine to find out the true meaning of the word. Within the doctrine itself, it turns out that there is no *communis opinio doctorum* (same opinion among experts) about what the legislators actually meant by the word *met verenigde krachten* or "together".

Prof. Mr. T.J. Noyon - Prof. Mr. G.E. Langemeijer (in P.A.F. Lamintang, 1986) argues that the word *verenigde krachten* must be interpreted as *verenigde personen* or several people in one bond. According to these professors, in this case the perpetrators need to at least know that in an act of violence several people were involved.

That there are two people who have committed an action is sufficient to say that the action has been carried out by *met verenigde krachten*. About this said Prof. Noyon-Langemeijer stated that: "Two people can do something together. This article does not explicitly specify how many people must be involved in the crime in question, so that the crime can be called as having been committed together, it is different with the provisions stipulated in Article 214 of the Criminal Code.

Wherever the law speaks of being together, it always mentions two or more people.”

4) Using violence

The law itself does not provide an explanation of what is meant by violence, but in Article 89 of the Criminal Code "only equates" with committing violence, namely the act of "making one faint or helpless". R. Soesilo, 1996, stated: What is prohibited in this article is: "doing violence". To commit violence means: to use force or physical strength that is not small in an illegal manner, for example hitting with the hands or with all kinds of weapons, kicking, kicking, and so on.

Doing violence in this article is not a tool or an effort to achieve something as in Articles 146, 211, 212 and others, but it is a goal. In addition, it does not include delinquency in Article 489, persecution in Article 351 and damage to goods in Article 406 and so on.

5) Against people or goods/against people or things

Tegen personen of goederen or against people or things, means that violence committed by several people openly and collectively must be directed against people or things. R. Soesilo, 1996, stated that violence must be directed against "people or things".

Animals or animals are also included in the sense of goods. This article does not limit that the person (body) or property must "belong to someone else", so that own property is also included in this article, even though there will be no person committing violence against themselves or their own property as a goal; if as a tool or effort to achieve something, maybe it can also happen¹⁵.

Regarding light torture, the regulation can be seen in Article 352 of the Criminal Code, while severe persecution in Article 354 of the Criminal Code:

Article 352 of the Criminal Code:

1. Except as referred to in articles 353 and 356, persecution which does not cause illness or impediment to carrying out a job or search, is threatened as light maltreatment, with a maximum imprisonment of three months or a maximum fine of four thousand five hundred rupiahs. The penalty can be increased by one third for the person who commits the crime against the person who works for him, or becomes his subordinate.
2. Attempting to commit this crime is not punishable.

Article 354 of the Criminal Code:

1. Anyone who intentionally injures another person, is threatened with serious mistreatment with a maximum imprisonment of eight years.
2. If the act results in death. guilty shall be punished by a maximum imprisonment of ten years.

R. Soesilo¹⁶ said that the criminal incident in Article 352 of the Criminal Code is called "mild mistreatment" and includes "minor crimes". Included in Article 352 is persecution that does not:

1. Make sick ("ziek" not "pijn") or
2. Inhibited to carry out his position or daily work.

Furthermore, R. Soesilo¹⁷ gave an example, for example A slapped B three times on the head, B felt sick (*pijn*), but did not get sick (*ziek*) and could still do his daily work, so A did "light abuse".

¹⁵ Eddy Rifai, "Perkara Pengeroyokan Nakes Dan Unsur Pasal 170 KUHP", Poskota Lampung, Agustus 2021," *Poskota Lampung*, August 2021.

¹⁶ R. Soesilo, *Kitab Undang-Undang Hukum Pidana (KUHP) Serta Komentar-Komentarnya Lengkap Pasal Demi Pasal* (Bogor: Politira, 1996).

¹⁷ *Ibid*.

For example again: A slightly injured B's left little finger (an orchestra violinist), until B's little finger was bandaged and had to be prevented from playing the violin (his daily work), so even though the wound was small, this abuse was not light abuse, because B hindered in his work.

As for serious abuse in Article 354 of the Criminal Code, R. Soesilo¹⁸ explained that in order to be subject to this article, the intention of the maker must be aimed at "severely injuring", meaning "severe injury" must be meant by the maker. If it is not intended and the serious injury is only a result, then the act is considered "ordinary torture which results in serious injury" (Article 351 paragraph (2) of the Criminal Code).

If the abuse causes the victim to be unable to perform his or her work because of the illness (pijn/pain) experienced, but does not result in serious injury or is not intended to cause serious injury, then the abuse can be punished with Article 351 paragraph (1) of the Criminal Code:

1. Persecution is punishable by a maximum imprisonment of two years and eight months or a maximum fine of four thousand five hundred rupiahs.
2. If the act results in serious injury, the guilty person is threatened with a maximum imprisonment of five years.
3. If it results in death, it is punishable by a maximum imprisonment of seven years.
4. Persecution is equated with intentionally damaging health.
5. Attempt to commit this crime is not punishable.

Regarding persecution in Article 351 of the Criminal Code, R. Soesilo¹⁹, said that the law does not provide any provisions as to what "persecution" means. According to jurisprudence, "persecution" is intentionally causing bad

feelings (suffering), pain, or injury. According to paragraph 4 of this article, it also includes the definition of persecution as "deliberately damaging people's health".

R. Soesilo²⁰ in the book also gives examples of what is meant by "bad feeling", "pain", "injury", and "damaging to health":

1. "bad feeling" for example pushing people into the river so that they get wet, telling people to stand in the hot sun, and so on.
2. "pain" for example pinching, backing up, hitting, slapping, and so on.
3. "wounds" for example slicing, cutting, stabbing with a knife and others.
4. "damaging health" for example people sleeping, and sweating, opened the window of his room, so that person catches a cold.

Based on the provisions of the laws and regulations above, it can be said that the perpetrators of violence against health workers can be subject to Article 170 of the Criminal Code if the perpetrator is more than one person or Article 351 of the Criminal Code (1 person) which causes the health worker to be injured or damage his senses or hinder his work, while if the health worker gets a light injury, the health worker can not damage the senses or hinder his work.

To provide protection for health workers during the COVID-19 pandemic, it is necessary to increase the provision of health facilities and infrastructure such as personal protective equipment, service fees, and others. There needs to be maximum law enforcement against perpetrators of violence against health workers.

¹⁸ *Ibid*
¹⁹ *Ibid*.

²⁰ *Ibid*.

Conclusion

Legal protection is an effort to maintain the rights of individuals or groups that can be fulfilled from strong or powerful parties such as the government or businessmen and other parties for the creation of security and public order. Legal protection for health workers is regulated in Article 57 of Law no. 36 of 2014 concerning Health Workers.

Meanwhile, health workers who have been attacked have been protected and regulated in Articles 170 and 351 of the Criminal Code. It is necessary to improve medical facilities and infrastructure such as personal protective equipment (PPE) and remuneration for health workers during the COVID-19 pandemic as well as streamlining criminal law enforcement by implementing Article 170 or 351 of the Criminal Code against perpetrators of violence against health workers.

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