

Dynamics Of Authority To Defend The Kanjuruhan Tragedy In The Criminal Justice System

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Abstract

The Criminal Justice System in Indonesia has explained related to the authority of each law enforcement apparatus, including the authority to defend suspects or defendants. However, deviations occurred in 2022 where the police acted as defenders in trials (legal advisors) for other members of the police who were accused in the Kanjuruhan tragedy, this is of course vulnerable to conflicts of interest and is not in line with the criminal justice system. The research method used is empirical juridical, which is related to the implementation of laws and regulations in cases that occur in society, in this case, the question of the authority to defend in the trial of the Kanjuruhan case. In principle, the authority to defend in the context of criminal justice is regulated in the Law No.18/2003, in cases where a police officer is acting as a legal representative for other police officers in criminal cases it is a deviation from the process of the criminal justice system in Indonesia, this also contradicts Article 16 in the Law No.2/2002, which explains that the police do not have the authority to provide legal assistance in criminal trials.

Keywords: authority; criminal justice system; defense

Introduction

The criminal justice system is a systems approach to a criminal justice mechanism resulting from the interaction between laws and regulations, administration, and social behavior. One indicator of the integration of the criminal justice system is the synchronization of the implementation of law enforcement, where one of the factors is law enforcers. Law enforcers known in the criminal justice system in Indonesia are the police as investigators, prosecutors as prosecutors, advocates as legal advisors, and judges as case breakers, these four elements are known as chess wangsana.

Law enforcers have their respective duties and functions, this aims to integrate law enforcement processes so that they do not overlap. However, in 2022, during the trial of the Kanjuruhan Tragedy case, there was a deviation from the process of authority in conducting a defense at a hearing held at the Surabaya District Court (PN), where the police became the attorney. three defendants in the kanjuruhan tragedy (Kurniawan 2023). At first glance, on October 1, 2022, there was an incident of shooting tear gas at the audience during a football match in progress at the kanjuruhan stadium which resulted in 135 people dying, this incident is known as the kanjuruhan tragedy. Given the many facts of victims that have become public and even international attention, the government finally formed a joint independent team to search for several people to be named as suspects in this case, unfortunately in the law enforcement process many irregularities occurred. (KONTRAS 2023)

In addition, in the KontraS report, which in several articles contains the initial trial of the Kanjuruhan tragedy which is full of oddities, the trial process must be open to the public and monitor findings related to the legal process related to the Kanjuruhan tragedy and the Kanjuruhan tragedy. the trial process is full of oddities, the facts are obscured so that the perpetrators of violence hide behind the Cloak of Power. The fundamentals are irregularities regarding members of the Indonesian National Police serving as legal advisors or defending themselves in court which should not be carried out (KontraS 2023).

The authority to defend when it is related to Law of the Republic of Indonesia Number 16 of 2011 concerning Legal Aid (hereinafter referred to as Law No.16/2011) states that an advocate or legal advisor has the role of providing legal assistance which in concept is a professional job that requires special education and expertise. This is in line with Law of the

Republic of Indonesia Number 18 of 2003 concerning Advocates (hereinafter referred to as Law No.18/2003) that advocates have the authority to defend.

The irregularities in the trial defense by the police in the a quo case were carried out under the pretext of obtaining an incidental permit, based on incidental Power of Attorney No.03/IjinSpecial/I/2023. If the incidental meaning of this event is examined in depth, it is prone to conflicts of interest. In fact, in the concept of criminal justice, the police act as investigators, not as a team of attorneys (Abdim Munib 2018) for suspects from the same institution, so that when they turn into a defense team to assist defendants in undergoing the legal process at trial, of course this becomes a problem in the concept of the criminal justice system in Indonesia.

This research has a relationship with previous research, the first research conducted by Chairul Huda entitled *The Position of the Police Subsystem in the Criminal Justice System* explains that the theoretical demands of the police subsystem are increasingly broad and colorful, the similarity of this research lies in the demands of the police subsystem causing widening discretion in the institution so that the implementation level more or less causes subjectivity, the difference in this research lies at the implementation level, previous research described the position of subsystems in a theoretical perspective, while this research explains the shift in the role of the police subsystem at the empirical level by linking theoretical deviations that have been known so far in the criminal justice system (Huda 1999). The second research was conducted by Kartika Widya Utama and the Team entitled *The Tragedy of Kanjuruhan and Abuse of Authority in the Implementation of State Administration Procedures*, in essence discussing tragedies, recommendations and abuse of authority in administering state administration (Utama and others 2022). This research has the same research object, namely kanjuruhan tragedy, the difference lies in the research point of view which the author examines using the perspective of criminal law and its enforcement process, while Kartika and the team's research uses the perspective of state administration. Furthermore, the third study conducted by Fikry Latukau entitled *Progress Study of the role of the Police in the Criminal Justice System* which basically explains about the police being considered as gatekeepers in the criminal justice system that the authority of the police is investigation (Latukau 2019). This research has something in common, namely discussing the police institution and its authority in the criminal justice system. The difference in this study discusses the deviation of the criminal justice system due to the shift of authority carried out in the trial process.

In the description of the background of this research, the author determines several formulations that will be discussed and reviewed, namely the overlapping powers of defense that cause irregularities in the criminal justice system and the effects of institutional dominance on the judicial process.

Method Research

The research method used is the juridical-empirical research method, in which this research focuses on the events of the authority of the defense in court by identifying through laws and regulations, the concepts and principles of applicable criminal law, as well as the impacts that occur on society or paying attention to other social phenomena (Mukhti Fajar and Achmad 2015). This research begins by analyzing the kanjuruhan event in the perspective of criminal law, as well as the law enforcement process carried out during the trial process. The discovery of deviations in the trial process in terms of the authority to defend is analyzed with the provisions of the laws and regulations in force in Indonesia regarding irregularities and the resulting impact.

Results and Discussion

Overlapping Regulations in The Authority to Defend between The Criminal Justice Sub-Systems in Indonesia

Soerjono Soekanto stated that there are factors in law enforcement including the legal factor itself (substance), law enforcer, facilities and amenities, community, and culture. If one of the factors does not work properly, the law enforcement process will be disrupted. The most important thing in a rule of law state is the existence of legal certainty or in this case, the relation is the substance of the law itself.

There is an overlap in the rules of authority in defending trials conducted during the trial of the tragedy of tragedy, this is certainly not in harmony with the law enforcement process and the criminal justice system. The following are several provisions regarding the authority to defend:

a. Law No.18/2003

In Article 5 paragraph (1) Law No.18/2003 explains that advocate is part of a freedom and independent law enforcer who is guaranteed by regulations and laws. Advocates are included in the *non-pro justitia* law enforcement group outside the government who participate in the implementation of law enforcement in the criminal justice system. Advocates are not positioned as civil servants or state officials, Article 3 paragraph 1 letter c explains that what is meant by "public servants" and "state officials" are civil servants as referred to in Article 2 Paragraph (1) and "state officials" as referred to in Article 11 paragraph (1) of Law of the Republic of Indonesia Number 43 of 1999 concerning Amendments to Law of the Republic of Indonesia Number 8 of 1974 concerning Principles of Civil Service (hereinafter referred to as Law No.43/1999 in conjunction with Law No.8/1974). In Article 2 paragraph (1) Law No.18/2003 it is determined that civil servants consist of Government employees; A police officer of the Indonesian National Armed Forces; and Personnel of *the Indonesian National Police*. So that the connection with the incident of the police becoming the defense team in the trial is a deviation from several applicable provisions, including this provision.

It is very clear in the Law No.18/2003 that members of the Indonesian National Police (Polri) cannot be appointed as advocates. So that the profession that has the right to use the attire/dress and provide legal assistance before a criminal case court is an advocate, and personnel of the Polri do not fall into this qualification.

b. Law of the Republic of Indonesia Number 2 of 2002 concerning the Indonesian National Police (hereinafter referred to as Law No.2/2002) and Regulation of the Head of the Indonesian National Police Number 2 of 2017 concerning Procedures for Providing Legal Assistance by the Indonesian National Police (hereinafter referred to as PerKapolri No.2/2017)

Article 1 point 1 Law No.2/2002 states The police are all matters relating to police functions and institutions by statutory regulations. Article 2 of the same regulation explains that the function of the police is to maintain security and hold the community hostage, as law enforcers, to protect and provide services to the community. Whereas in Article 1 number 3 PerKapolri No.2/2017, explains the meaning of legal aid as all efforts, efforts, and activities in order to help resolve legal issues through the courts and outside the courts. Those entitled to receive legal assistance are explained in Article 3 paragraph 1 PerKapolri No.2/2017, namely Police Institution; Functional units/work units; Civil servants at the National Police; and Police family.

Whereas Article 1 number 6 PerKapolri No.2/2017 explains Legal Counsel/Legal Attorney/Companion is a National Police and the Civil Servant at who receives orders/assignments or powers of attorney from Polri leadership to provide legal assistance.

Article 8 PerKapolri No.2/2017 describes the implementation of paragraph 1 of legal aid, namely, Legal Counsel/Legal Attorney carries out legal aid on Investigation level; Prosecution rate; and/or All levels of justice.

Then paragraph 2 that, the Legal Counsel/Legal Attorney as referred to in paragraph (1) has a Bachelor of Laws background. Article 5 paragraph 1 PerKapolri No.2/2017 explains that Legal Aid is the responsibility of the Head of the Legal Division of the National Police/Head of the Legal Division of the Regional Police, whose implementation is carried out by:

- a. Head of Legal Assistance and Advice Section of the Legal Division of the National Police/Head of Sub-Division of Legal Assistance for the Regional Police; and/or
- b. Head of Law Application Section of the Police Legal Division/Head of Sub-Division of Legal Aid for the Regional Police/Head of Law Application Affairs.

Supported by paragraph 2 to obtain an order from the authorized Polri leadership, the implementation of legal aid as referred to in paragraph (1) is carried out by:

- a. Personnel of the Indonesian National Police and/or Civil Servants of the National Police who act as Legal Counsel/Legal Counsel/Companion based on an order from the authorized National Police leadership; And
- b. Part of the application of law in the form of clarification, legal studies, giving opinions, and legal advice in a juridical manner regarding general crimes, special crimes, certain crimes, human rights, disciplinary codes of ethics, and institutions that require them.

So that according to PerKapolri No.2/2017, Polri members and/or Polri civil servants can become attorneys to assist Polri members who are dealing with legal cases, both criminal and civil cases. The types of cases that can be handled by members of the Polri to act as legal advisors for a case are described in Article 12 to Article 18 PerKapolri No.2/2017.

Police law enforcement does not have the authority to act as an attorney/legal adviser to the accused. By Article 16 paragraph 1 of Law No.2/2022 in criminal proceedings, the Polri only has several powers, including:

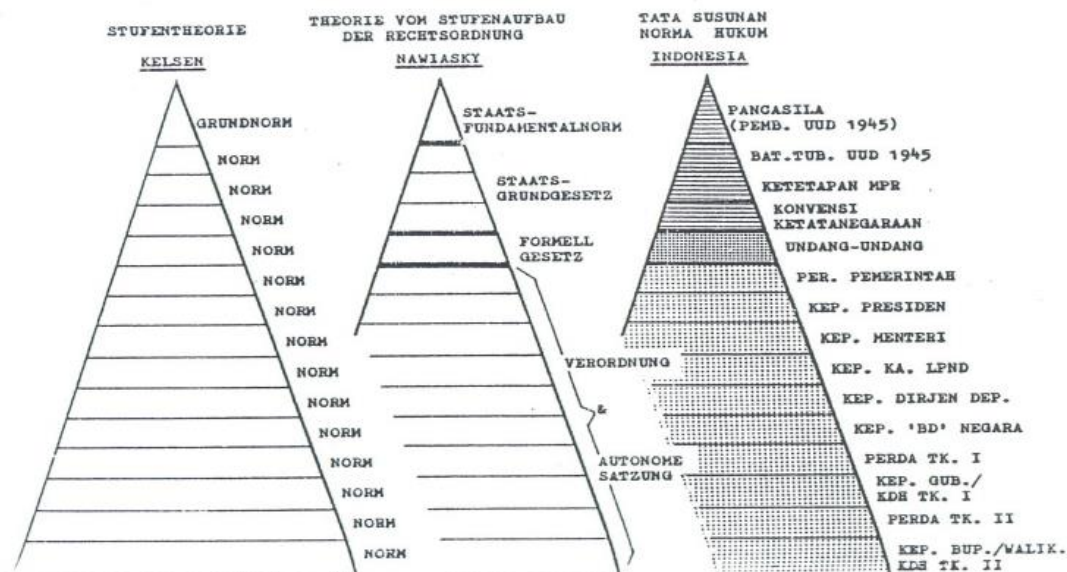
- a. Do arrest, detention, search, and confiscation.
- b. Forbid every person to leave or enter place incident case for interest investigation.
- c. Bring and confront person to investigator in framework investigation.
- d. Ordered to stop the suspected person and ask for identity
- e. Do inspection and confiscation of letters.
- f. Call the person for heard and checked as suspect or witness.
- g. Bringing in person the necessary expert in relationship with inspection case.
- h. Stage termination investigation.
- i. Deliver file case to prosecutor general; etc.

According to Article 16 paragraph 1 of Law No.2/2022, Polri does not have the authority to provide legal assistance on the implementation of examination duties in criminal law. In Article 16 paragraph 2 Law No.2/2002 it is explained that paragraph 1 letter l namely "to take other responsible actions according to the law" is an act of investigation and investigation, not an emergency that has authority in terms of defense and provision of legal assistance to the accused.

Even though in PerKapolri No.2/2017 is permitted, there is a general principle in Indonesian laws and regulations, namely the principle of *lex superior derogate legi inferiori* that laws and regulations that have a lower degree in the hierarchy of laws and regulations may not contrary to the higher.

Article 7 Law of the Republic of Indonesia Number 12 of 2011 concerning Formation of Legislation (hereinafter referred to as Law No.12/2011), divides the types and hierarchy of legislation, namely (Susanti 2017):

Picture 1. Hierarchy of Legislation



Whereas based on the hierarchy or arrangement of legal norms it is clear that PerKapolri No.2/2017 has contradicted Polri and the advocate law so the basis for having the authority to defend using the Police Chief's rules is not by legal certainty in the laws and regulations in Indonesia.

Deviations against the Criminal Justice System

The Criminal Justice System is a concept or term used for the existence of a working mechanism for the use of basic systems in carrying out crime prevention. As a crime prevention system, the criminal justice system has objectives, including (Afrizal 2021):

- a. Prevent society as a victim
- b. Resolving crime cases that occur so that people are satisfied with the enforcement of justice by punishing the guilty
- c. Strive for those who have committed a crime so as not to repeat their actions.

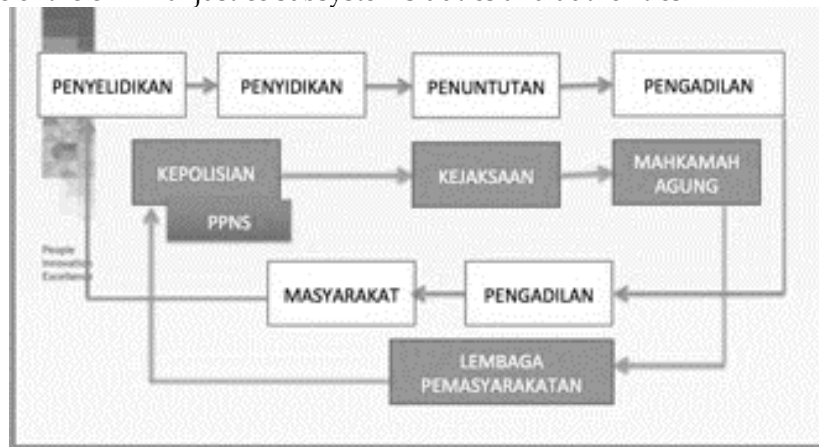
In the criminal justice sub-system, law enforcers have their respective authorities and duties, including (SUGIHARTO 2012) :

- a. The police, being a subsystem of criminal justice based on the provisions of Article 15 and Article 16 of Law No.2/2002 states that the police have special authority, namely as investigators and investigators regulated in Articles 5-7 of The Criminal Procedure Code (Kitab Undang-Undang Hukum Acara Pidana or referred to as KUHAP), with the following tasks receive complaints and reports from the public when a crime occurs; carry out investigations and investigations of a criminal act; selection of cases to be submitted to the prosecutor and report the results of the case investigation; and ensuring the protection of parties involved in the criminal justice process
- b. The Prosecutor's Office, as a sub-system of the prosecutor's office, has the authority and duties as Article 14 of the KUHAP, including starting from examining and receiving investigative case files to informing the defendant regarding the trial schedule via summons according to the provisions.

- c. Judiciary, the existence of judges and court institutions as a subsystem has been regulated through the provisions of judicial power and also the KUHP, the task of which is to receive, examine and decide on cases that have been filed.
- d. Correctional Institutions. Correctional Institutions are an important part of the criminal justice system because they are a place for individual recovery to be accepted in society again.
- e. Advocates or lawyers, as a subsystem, bear as independent and free law enforcers who are also instruments in the judicial process who have and have an equal position with other law enforcement officers in the process of upholding law and justice.

The position of an advocate is in every system process that is passed, because as a companion and legal adviser for suspects and defendants. The following is a criminal justice subsystem scheme: (PRAHASSACITTA 2018)

Picture 2. Schematic of the criminal justice subsystem's duties and authorities



The existence of the authority of the police in the framework of legal advisors for the accused will change the concepts and schemes in the criminal justice system. As a sub-system, the role of each law enforcer has been divided according to their duties and authorities so that there is no overlapping of duties and authorities in realizing an integrated criminal justice system (Hajairin 2021).

The initial conception of the criminal justice system in Indonesia has specifically placed sub-systems for each task and authority in each law enforcer, this is implemented so that there is no overlapping of powers. This system starts from the police who are authorized as investigators then there are also prosecutors as prosecutors, lawyers as a team of attorneys or legal advisors, judges who give decisions to the penitentiary as individual recovery. This sub runs according to the authority that has been determined. The presence of the police defending the trial process is certainly an aberration in the criminal justice system. The police, who initially acted as investigators to identify suspects, but eventually became defenders for suspects, is an impropriety in an enforcement process. This is not in line with what has been determined, and also creates confusion in the law enforcement process.

The consequence of irregularities in the criminal justice system is certainly influential in the law enforcement process that is just, certain and expedient. Besides that, in the a quo case, the government has even appointed a special joint team to resolve this case which has caught the public's attention, but this is not in line with the purpose of forming a joint team. If reviewed, the suspect is a policeman, the investigator is a police officer and the police team is also a team of attorneys, so that there are many irregularities that have been determined in the system that has so far developed in the process of enforcing criminal law in Indonesia.

The Power to Defend Suspects in the same Institution during The Law Enforcement Process is Vulnerable to Conflicts of Interest

The professionalism of Polri members implies mastery of and expertise in assignments in the field of law enforcement, demanding honor and responsibility regarding the implementation of their authority and duties towards the realization of a prosperous and just society based on Pancasila and The 1945 Constitution of the Republic of Indonesia (hereinafter referred to as UUD NRI 1945). So that every behavior, action or action of Polri members in carrying out their duties and its authority is always bound by the applicable laws and regulations, and must be legally accountable.

The shift in police authority in providing legal assistance to defendants who also come from the same institution has led to many irregularities. In addition to violating statutory regulations, legal assistance by members of the Polri for defendants who are also members of the Polri has led to a conflict of interest. Conflict of interest according to *the Council Of Europe* is a potential that, if not managed in a transparent and accountable manner, will encourage public officials to make decisions that are not based on the public interest (Tojeng 2017).

In the process of enforcing the law on the Kanjuruhan tragedy, another suspect is a member of the police. When facing trial as a defendant, he was accompanied by other police officers who previously worked at the same agency who acted as investigators. This case has been investigated by the police, then summoned by the prosecutor's office, but in the trial process it was accompanied by a team of attorneys from the East Java Regional Police who were still in the same agency and the Regional Police Legal Entity (Polda Bidkum) who were none other than partners in the same agency under the pretext of their existence. incidental letter, of course this will cause many conflicts, one of which is a conflict of interest and a conflict of goals.

Conflicts of interest can push an official to there is condition on personal considerations influence, dominate, and even get rid of his professionalism in carrying out his duties. These personal considerations can come from their interests, relatives, or groups which then pressure or reduce their ideas so that the decisions are distorted and have bad implications for the public good.

Diagram 1. Domination of Institutions



The scheme above illustrates that there are police suspects - then an investigation process (by the police) is carried out - followed by an investigation process (by the police) - in court, the police also act as legal advisers to defend the accused. Of course, this is unusual, because from the start the parties involved were dominated by the police institution, which should have had several other parties as sub-sections of the system.

The Impact of Police Domination on the Trial Process in Law Enforcement

The dominant involvement of the police institution in the kanjuruhan tragedy case with District Court Decision No11/11/Pid.B/2023/PN.Sby; 12/Pid.B/2023/PN.Sby; and

13/Pid.B/2023/PN.Sby impacting the trial process. During the trial, the room was filled with Brigade Mobile (Brimob) members and other police officers who also acted intimidatingly by cheering and shouting at the Public Prosecutor (JPU) who was about to enter the courtroom together with the three police defendants. This incident can be said as a form of contempt for the court or *Contempt of Court* (Civil Society Coalition 2023).

Contempt of Court is any action or conversation, whether passive or active, attitudes and/or speech and behavior both inside and outside the court, the purpose and aim of which is to humiliate the dignity, honor, and authority of the court, such an act can be carried out by a person or a group of people, thus disrupting and hindering the system or process of administering justice that should be.

Problems of *Contempt of Court* in Indonesia the basic idea of criminal regulation in Indonesia historically comes from the teachings of the *common law family* in England. Two *Contempt of Court teachings*, including (Johny 2009):

1. *Civil Contempt* is a disobedient decision or orders court, and so is resistance to implementation law (*an offense against the enforcement of justice*).
2. *Criminal Contempt*, namely actions aimed at disrupting or hindering the administration of criminal justice, so it is a form of resistance to the administration of justice (*an offense against the administrator of justice*). Sanctions against this criminal contempt are criminal (*primitive nature*).

Criminal contempt can be classified into five categories, namely (Nugroho and others 2017):

1. *Contempt in the face of the court, direct contempt in the face*, namely disturbance in front of or in the courtroom can be in the form of words of the prosecutor or actions such as threatening, insulting, physical attacks on judges, prosecutors, legal advisors, witnesses and others.
2. *Act calculated to prejudice the fair trial indirect contempt ex facie*, namely acts that affect the judicial process, this among others:
 - a. Threatening, intimidating, bribery, and making private communications to influence decisions.
 - b. Commenting in the newspaper on a case pending judgment.
 - c. Providing impartial information or publications to influence decisions.
3. *Scandalizing in the court* is an act that is embarrassing or creates a scandal for the court. This *Contempt of Court* aims to reduce the authority of the court, for example, news about disgraceful acts committed by judges.
4. *Obstructing Court Officers*, namely disturbing court officials outside, threatening, attacking, hitting, threatening judges, prosecutors or bailiffs after leaving the courtroom.
5. *Revenge for acts done in the course of litigation*, this context is in the form of retaliation for actions committed during the ongoing court process, namely actions aimed at witnesses who have testified from the court.

So what was done by several members of the police in court during the trial process, had an impact on the decision-making of the prosecutor and also disrupted the course of the trial can be categorized as a classification of *criminal contempt*. This happens because of the dominance of the institution and the many roles taken by the police in the law enforcement process where the defendant is none other than an internal party of the institution.

Conclusion

The Criminal Justice System is a system used in crime prevention. In achieving the objectives of the system, there are known subsystems, one of which is related to law enforcement and its authority, including the police agency which acts as investigators and investigators. However, in the trial of the kanjuruhan tragedy, there was a deviation of authority. The role of legal advisors, which should have been carried out by advocates or people with special expertise, was replaced by the police. This is done under the pretext of

incidental power, but if examined further, the meaning of incidental power is multi-interpretable and subjective. This deviation in the authority of the defense has caused many things, *first*, there are overlapping rules that are not in accordance with PerKapolri No. 2/2017 concerning legal assistance by the Polri which is used as the basis for the authority of the defense which is clearly contrary to Law No.2/2002 itself and also contrary to Law No.18/2003. *Second*, in the case that the a quo is considered a form of deviation from the integrated criminal justice system, this shift in authority in carrying out the defense of course creates chaos. subsystem that has a major influence on the criminal justice system regarding crime prevention. *Third*, there are police officers who defend other police officers in court against other police officers who are accused of having a conflict of interest. As well as the *four* trial processes which ultimately led to many other incidents, one of which was contempt of court conducted by other members during the trial process.

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