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Protection of Worker's Wages to Commit Justice

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Abstract

This study examines Law No. 13 of 2003 concerning Employment in terms of wages. In addition to internal contradictions between the articles contained therein, there is also a conflict of norm between Law Number 13 of 2003 concerning Labor and Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. The research method used is prescriptive normative research with a statute approach. The technique of collecting legal materials with literature study and the analysis of legal materials using the deduction method. To find out and analyze the problem, the Pancasila Law Cita theory, Social Justice theory, and Legal Certainty theory are used. This study concludes that in Law Number 13 of 2003 concerning Labor there is an internal contradiction between the articles contained in it in addition there is also a disharmony between Law Number 13 of 2003 concerning Labor with the Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. With the internal contradiction between the articles in Law No. 13 of 2003 concerning Manpower and also the conflict of norm with other rules, harmonization should be immediately carried out.

Keywords

employment, wages, justice.

Introduction

Every national Labor Day commemoration which is on May 1 each year or

commonly called the May Day commemoration, we are always treated to a wave of demonstrations (demonstrations) conducted by workers (laborers) who are members of various trade unions¹. As if it becomes a routine, this continues to happen every year and seems to be a problem (problem) that never found a solution. The increase in wages seems to be a mandatory requirement every year for workers / laborers. Adequate wages for workers are still an important theme in the workers' struggle².

In his speech the workers always voiced about the imbalance between the fate of the workers compared to the fate of the owners of capital. The owner of capital is likened to a greedy person who only cares about his personal interests economically rather than thinking about the needs of his workers³. Capitalism is the cultivation of capital or wealth, that is, an economic system based on the doctrine of individual rights, in the sense that capitalism recognizes everyone as the owner of his own life through any means provided he does not violate the rights of others⁴. Talking about wages, means we are talking about something complex that involves many backgrounds and many interests in it. How not, in each year when going to set a minimum wage often there is no agreement between the workers represented by the union and the employers represented by Apindo. This is where the role of the government is expected to connect communication between workers and employers to find an agreement. From the description of the complexity of the labor issues above, not to mention related to existing laws and regulations which should be able to regulate wages, a fair wage regulation model is needed. Fair in terms of labor / labor and fair also in terms of the company⁵. Talking about rules in terms of employment, of course, at this time we refer to Law No. 13 of 2003 concerning Manpower.

First in the domain of administrative law / state administration related to permits submitted by employers to the government, secondly in the realm of civil law begins with the signing of employment contracts between workers and employers and third in the realm of criminal law related to criminal sanctions that threaten violators, despite the fact sanctions this criminal is very rarely handed down⁶. Labor law is also commonly referred to as labor law, Imam Soepomo explained that labor law is a set of written and unwritten regulations relating to

¹ Jorge Pérez Pérez, 'The Minimum Wage in Formal and Informal Sectors: Evidence from an Inflation Shock', *World Development*, 133 (2020) <<https://doi.org/10.1016/j.worlddev.2020.104999>>.

² Y G Moydinova, 'The Role of Labor Protection in Production', 9 (2021), 54–57.

³ Prema chandra Athukorala and Evelyn S. Devadason, 'The Impact of Foreign Labor on Host Country Wages: The Experience of a Southern Host, Malaysia', *World Development*, 40.8 (2012), 1497–1510 <<https://doi.org/10.1016/j.worlddev.2012.04.025>>.

⁴ Gustavo Leyva and Carlos Urrutia, 'Informal Labor Markets in Times of Pandemic', *Review of Economic Dynamics*, 1 (2022) <<https://doi.org/10.1016/j.red.2022.01.002>>.

⁵ Naibao Zhao and Meng Sun, 'Effects of Minimum Wage on Workers' on-the-Job Effort and Labor Market Outcomes', *Economic Modelling*, 95. December 2019 (2021), 453–61 <<https://doi.org/10.1016/j.econmod.2020.03.012>>.

⁶ Awaludin Marwan, Diana Odier Contreras Garduno, and Fiammetta Bonfigli, 'Detection of Digital Law Issues and Implication for Good Governance Policy in Indonesia', *Bestuur*, 10.1 (2022), 22–32 <<https://doi.org/10.20961/bestuur.v10i1.59143>>.

events where one person works for another person by receiving wages⁷. In the 1945 Constitution there are at least 2 Articles that describe the wage system in Indonesia. Namely in Article 27 paragraph (2) of the 1945 Constitution mandates that, "Every citizen has the right to work and a decent living for humanity", and also Article 33 paragraph (1) states that, "The economy is structured as a joint effort of kinship".

In addition to the 1945 Constitution, the regulation of wages is also regulated in Law Number 13 of 2003 concerning Manpower. However, if you look at Law Number 13 Year 2003 regarding Manpower, there are at least 2 contradictory Articles (internal contradictions). First, Article 68 whose contents are contradictory to Article 69 paragraph (1). In addition to contradicting Article 68 and Article 69 paragraph (1), Article 69 paragraph (1) also contradicts the understanding of children in other laws (inconsistencies), namely the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Republic Acts Indonesia Number 23 of 2002 concerning Child Protection. In addition, other contradictions will be found in Article 90 paragraph (1) and Article 90 paragraph (2).

Research Methods

This research is doctrinal law research, is prescriptive in nature, discussed doctrines and principles in legal science. This research is used to conduct studies on the substance and structure of law, analyze synchronization and systematization of legal arrangements vertically and horizontally which provide maps and directions for law. The approach used in this legal research is the statutory approach.

Legal material primers used in this study include the 1945 Constitution, Law Number 13 of 2003 concerning Labor, Law of the Republic of Indonesia Number 35 of 2014 concerning amendments to Law Number 23 of 2002 concerning Child Protection. Secondary legal material which is used covering books, journals and papers that are substantially relevant to the research theme and problem.

Results And Discussion

The general wages can be interpreted as rights received by workers in return for work they have done. According to Eggi Sudjana, the understanding of wages from an economic point of view, which is broadly stated that wages are all forms of income received by workers or laborers or employees, both in the form of money and goods, within a certain period of time in an economic activity⁸.

Law Number 13 of 2003 concerning Manpower, the meaning of wages is contained in Article 1 number 30, which states that wages are workers / laborers' rights received and expressed in the form of money in return from employers or

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8 Alessandra Scalon Brito and Celia Lessa Kerstenetzky, 'Has the Minimum Wage Policy Been Important for Reducing Poverty in Brazil? A Decomposition Analysis for the Period from 2002 to 2013', *Economía*, 20.1 (2019), 27-43 <<https://doi.org/10.1016/j.econ.2019.02.002>>.

employers for workers who are determined and paid according to an employment agreement, agreement or statutory regulation, including benefits for workers / laborers and their families for an and / or service that has been or will be performed⁹. Law Number 40 of 2004 concerning the National Social Security System, the definition of wages can be found in Article 1 number 13, which states that salaries or wages are workers' rights which are received and expressed in money as compensation from employers to workers who are determined and paid according to an employment agreement, agreement or statutory regulation, including benefits for workers and their families for work and / or services that have been or will be performed¹⁰. Government Regulation Number 78 Year 2015 concerning Wages, the meaning of wages explained in Article 1 number 1 explains that wages are the rights of workers / laborers received and expressed in cash as compensation from employers or employers for workers / laborers who are determined and paid according to a work agreement , agreements or laws and regulations, including benefits for workers / laborers and their families for a job and / or service that has been or will be performed.

If we pay close attention to the definition of wages in the existing laws and regulations, it is clear that the wages provided are based on an employment agreement between the two parties that was agreed upon in advance. From this explanation it can be concluded that the wage of workers / laborers is the private legal domain between the employer and the worker / laborer. However, even if wages fall into the realm of private law, the task of the government is to ensure that the wages provided are not too low. To safeguard this, the determination of the lowest wage standard or minimum wage was initiated through legislation known as the regional minimum wage (UMR). With the existence of a minimum wage, it is expected that workers can get wages in accordance with their rights to meet their daily needs. However, lately with the increase in the UMR each year which is always preceded by a wave of demonstrations from workers / laborers on the Memorial Day (May Day) indirectly threatens the existence of small (medium to lower) companies because rising UMR means increasing costs (cost) production, and this will burden small companies, and could be threatened bankrupt (bankrupt)¹¹. In the current era of openness this should not need to happen, especially in Indonesia who are familiar with the Pancasila economy. This should be discussed or discussed in a family way to find a solution. This aims to ensure that the wheels of the economy keep turning¹².

According to Article 41 paragraph (2) Government Regulation No. 78 of 2015

9 Dewi Nurul Savitria, 'Legal Policy on the Protection of the Right to Health during the Covid-19 Pandemic in France', *Bestuur*, 10.1 (2022), 1–11 <<https://doi.org/10.20961/bestuur.v10i1.64330>>.

10 Anom Wahyu Asmorojati and others, 'The Impact of COVID-19 on Challenges and Protection Practices of Migrant Workers' Rights', *Bestuur*, 10.1 (2022), 43 <<https://doi.org/10.20961/bestuur.v10i1.60179>>.

11 Nicolas Gavaille and Anna Zasova, 'Minimum Wage Spike and Income Underreporting: A Back-of-the-Envelope-Wage Analysis', *Journal of Comparative Economics*, 2022 <<https://doi.org/10.1016/j.jce.2022.08.003>>.

12 Jeffrey Clemens and Michael R. Strain, 'Understanding "Wage Theft": Evasion and Avoidance Responses to Minimum Wage Increases', *Labour Economics*, 79 (2022), 102285 <<https://doi.org/10.1016/j.labeco.2022.102285>>.

explained that, "The minimum wage as referred to in paragraph (1) is the lowest monthly wage consisting of wages without benefits or basic wages include fixed benefits. " The goal of setting a minimum wage is to create a decent income for laborers / laborers. This aims to provide a safety net for workers / laborers, so that workers / laborers are not paid below their monthly living needs¹³. The purpose of setting minimum wages can be distinguished micro and macro. In micro purposes the determination of minimum wages, namely: (a) as a safety net so that wages do not decline, (b) reduce the gap between the lowest and highest wages in the company, (c) increase labor income (labor) at the lowest level. While the macro-objectives of setting minimum wages are aimed at (a) income distribution, (b) increasing the purchasing power of workers and expanding employment opportunities, (c) changes in the structure of sectoral industrial costs, (d) increasing national work productivity, and (e) facilitating workforce communication.

Analysis of Law No. 13 of 2003 concerning Manpower

The regulation on manpower is stated in Law Number 13 of 2003 concerning Manpower. The law also stipulates the determination of the minimum wage as a safety net. However, in its implementation after the stipulation of the minimum wage every year, on the commemoration of Labor Day (may day) we always encounter waves of demonstrations (demonstrations) from the workers / laborers. The goal of setting minimum wages has been implemented well, surely a wave of demonstrations (demonstrations) from workers / laborers does not occur. However, seeing the fact that every year there is a wave of demonstrations (demonstrations) on the commemoration of Labor Day (may day) means the purpose of the law has not been realized¹⁴.

According to the 1945 Constitution the purpose of the establishment of the Unitary State of the Republic of Indonesia (NKRI) as stated in paragraph IV of the 1945 Constitution of the Republic of Indonesia which states that: "Then, rather than that to form an Indonesian Government that protects all Indonesian people and all of Indonesia's blood and to promote public welfare, educate the nation's life, and participate in carrying out world order based on freedom, eternal peace and social justice. " While the core of the Pancasila joint consists of five precepts, in the form of divinity, humanity, unity, society and justice¹⁵. According to the founding fathers, namely Ir. Soekarno, the core of Pancasila when squeezed in the form of mutual cooperation. In the field of law, manifestation of the Pancasila ideology is elaborated in the ideals of the Pancasila law which functions as the foundation and direction of the development and development of national law. The ideals of the

¹³ Anikó Bíró, Dániel Prinz, and László Sándor, 'The Minimum Wage, Informal Pay, and Tax Enforcement', *Journal of Public Economics*, 215 (2022), 104728 <<https://doi.org/10.1016/j.jpube.2022.104728>>.

¹⁴ Ran Gu, 'Human Capital and the Business Cycle Effects on the Postgraduate Wage Premium', *Review of Economic Dynamics*, 2022 <<https://doi.org/10.1016/j.red.2022.07.001>>.

¹⁵ Pengcheng Du, Yi Zheng, and Shuxun Wang, 'The Minimum Wage and the Financialization of Firms: Evidence from China', *China Economic Review*, 76 (2022), 101870 <<https://doi.org/10.1016/j.chieco.2022.101870>>.

Pancasila law are interpreted as rules of community behavior that are rooted in the ideas, tastes, intentions, creations and thoughts of the people themselves. In this case there are three elements, namely justice, efficacy and legal certainty. Legal development that is not rooted in the value of Pancasila is a denial of the spirit and struggle of the founders of the Republic of Indonesia and only beneficial to foreign interests¹⁶.

The view of justice in national law is based on the philosophy and ideology of the nation and state, namely the values of Pancasila. For the people and people of Indonesia, Pancasila as a view of life and state philosophy (philosophical grondslag) is always maintained because as an ideology and the basis of the country is the most suitable for a very diverse Indonesian society and nation. Axiologically, the Indonesian people are supporters of Pancasila values¹⁷.¹⁸The nation of God who is Godly, who is humane, who has unity or cooperation, who is socially based, and who is socially just, is a condition and condition that he wants to continue to create that is even better in the life of society, nation and state.

The Indonesian people as supporters of values must respect, acknowledge and accept Pancasila as valuable. The recognition, appreciation, and acceptance of Pancasila as a value that will appear in reflecting the attitudes, behavior or actions of the Indonesian people. Therefore, Pancasila is a source of values and sources of Indonesian national law. The view of justice in national law for the Indonesian people is focused on the state foundation, namely Pancasila, which the fifth precepts read, "Social justice for all Indonesian people". The problem now is what is called fair according to the conception of national law derived from the values of the Pancasila?

According to Kahar Mashhur gives four meanings of what is called fair, namely: (1) Fair is putting things in their place. (2) Fair is accepting rights without more and giving rights to others without less. (3) Fair is giving rights to everyone who has the full right without more or less between fellow people who are entitled under the same circumstances, and (4) Fair is to impose penalties on bad people or who break the law in accordance with the mistakes and violations committed. To describe justice in the perspective of national law there is an important discourse on justice and social justice. Fair and justice are the recognition and equal treatment between rights and obligations. Fair and justice will be realized if there is recognition and equal treatment between rights and obligations.

When connected with the second precepts of Pancasila as the source of national law of the Indonesian people, in essence instructs us to always make

16 Christoph Benz Müller, Xavier Parent, and Leendert van der Torre, 'Designing Normative Theories for Ethical and Legal Reasoning: LogiKEy Framework, Methodology, and Tool Support', *Artificial Intelligence*, 287 (2020), 103348 <<https://doi.org/10.1016/j.artint.2020.103348>>.

17 Anna Arstein-Kerslake and Jennifer Black, 'Right to Legal Capacity in Therapeutic Jurisprudence: Insights from Critical Disability Theory and the Convention on the Rights of Persons with Disabilities', *International Journal of Law and Psychiatry*, 68 (2020), 101535 <<https://doi.org/10.1016/j.ijlp.2019.101535>>.

18 Joyeeta Gupta and Maarten Bavinck, 'Towards an Elaborated Theory of Legal Pluralism and Aquatic Resources', *Current Opinion in Environmental Sustainability*, 11 (2014), 86-93 <<https://doi.org/10.1016/j.cosust.2014.10.007>>.

harmonious relations between individuals individually with other groups of individuals so as to create a just and civilized relationship. This just and civilized relationship can be likened to light and fire, if the fire gets bigger the light will be brighter too. So, if the civilization is of high value, then justice becomes stable. Furthermore, if it is related to "social justice", then justice must be linked in the social context. According to Purnadi and Soerjono¹⁹, social justice can be interpreted as: (1) Restoring lost rights to those entitled to, (2) Eradicating abuse, fear and rape from employers and authorities. (3) Realizing the equality of law between each individual, businessman and rich people which he gets unnaturally.

In the Pancasila perspective, national law regulates justice for all parties, therefore justice in the perspective of national law based on Pancasila values is justice that harmonizes or harmonizes common justice between individual justice. In general or social justice the emphasis is more on the balance between individual rights and general obligations that exist in the life of a group or society²⁰. According to Gunarto in fact the Indonesian people already have a reference or guideline for how to implement social justice, especially the principle of social justice for all Indonesian people. According to him the meaning of "justice" in the fifth principle of Pancasila has a sharper economic meaning than the "justice" in the second principle of Pancasila which is more spiritual.

The Pancasila justice to address wages in Indonesia can be seen from two sides. The first is from the business side, with the existence of rules regarding the stipulation of minimum wages in Indonesia, the payment of wages must refer to the amount. of course this wage is given after the laborers perform their obligations, namely work. Then in terms of labor / laborers, with the minimum wage set by the government, this must be understood as an acceptable right after laborers / laborers carry out their obligations namely work. Not only calculating quantity, but also must pay attention to the quality of work. It aims to achieve the company's goals that have been made. With this, the justice envisioned will be realized. The book "A Theory of Justice" John Rawls explains the core theory of social justice namely, "the difference principle" and "the principle of fair equality of opportunity". which means, "the principle of difference" and "the principle of equal freedom". With the explanation, "Social and economic differences must be arranged so as to provide the greatest benefits for those who are most disadvantaged". And "Those who at least have the opportunity to achieve prospects for welfare, income, authority. It is these who must be given special protection²¹.

The Law Number 13 of 2003 concerning Manpower, there are at least 2 contradictory Articles (internal contradictions). First, Article 68 whose contents are contradictory to Article 69 paragraph (1). Article 68 clearly states that "Employers are prohibited from employing children". However, if we look at the next Article,

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20 Abraham J. Miller-Rushing and others, 'Conservation Ethics in the Time of the Pandemic: Does Increasing Remote Access Advance Social Justice?', *Biological Conservation*, 276 (2022), 109788 <<https://doi.org/10.1016/j.biocon.2022.109788>>.

21 Sammie L. Powers and others, 'The Power of Parks: How Interracial Contact in Urban Parks Can Support Prejudice Reduction, Interracial Trust, and Civic Engagement for Social Justice', *Cities*, 131 (2022), 104032 <<https://doi.org/10.1016/j.cities.2022.104032>>.

namely Article 69 paragraph (1) reads, "The provisions referred to in Article 68 may be excluded for children aged between 13 (thirteen) years to 15 (fifteen) years to do light work. As long as it does not interfere with the development and physical, mental and social health "²². In the 2 Articles above it has contradictory contents, in Article 68 it is clear that employing children is a prohibition, but in Article 69 paragraph (1) there are exceptions for children aged 13 (thirteen) up to 15 (fifteen) years of age able to do work light. This will be a gap for the exploitation of children.

In addition to contradicting Article 68 and Article 69 paragraph (1), Article 69 paragraph (1) also contradicts the understanding of children in other laws (inconsistencies), namely the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to Republic Acts Indonesia Number 23 of 2002 concerning Child Protection. In Article 1 paragraph (1) it is explained that "A child is someone who is not yet 18 (eighteen) years old, including children who are still in the womb. The Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Protection of Children has been explicitly explained about the understanding of children, the makers of the Act should not be allowed to give other meanings or provide exception. This is based on the principle of law, "Lex specialist derogat legi lex Generali", which means that the more specific law overrides the more general law.

The legislation is contrary to a legal principle, then the law needs to be reviewed. It is feared that it will damage the joints of the law. And it would be better if Article 69 paragraph (1) is abolished, because it has the potential to threaten the safety of children. In addition, other contradictions will be found in Article 90 paragraph (1) and Article 90 paragraph (2). In Article 90 paragraph (1) reads, "Employers are prohibited from paying wages lower than the minimum wage as Article 89. However, in the next paragraph namely Article 90 paragraph (2) it is stated," For entrepreneurs who are unable to pay the minimum wage as intended in Article 89, it can be suspended ". The "suspension" clause here will lead to multiple interpretations. This will make workers (laborers) threatened to receive wages below the stipulated minimum wage. In this case, it can be used as a loophole for entrepreneurs not to pay obligations as specified.

Article 90 paragraph (2) was changed to "Employers who are unable to pay the minimum wage as referred to in Article 89 are unlawful and will be subject to administrative sanctions and or pay compensation". This is intended to force employers to pay labor (labor) wages in accordance with the stipulated minimum wage. In the protection and law enforcement, there are three elements that must be considered, namely: legal certainty (*rechtssicherheit*), legal usefulness (*zweckmassigkeit*), and legal justice (*gerechtigheit*)²³. However, for the ranks of law enforcers, it is necessary to consider the opinion of A. Hamzah, namely, "The

22 Elizabeth M Heitkemper and Whitney Thurman, 'Social Justice Informatics: A Critical Approach for the Future', *Nursing Outlook*, 70.3 (2022), 374–76 <<https://doi.org/10.1016/j.outlook.2022.02.008>>.

23 Edwin Buitelaar and Niels Sorel, 'Between the Rule of Law and the Quest for Control: Legal Certainty in the Dutch Planning System', *Land Use Policy*, 27.3 (2010), 983–89 <<https://doi.org/10.1016/j.landusepol.2010.01.002>>.

principle thing in the series of uses of economic political tools is that what should take precedence is actions that enable the development of production towards" economic growth "while economic crime is not the most hopeful drug to improve economic processes.

Lon L. Fuller in his book "the Morality of Law (1971: 54-58) submit 8 (eight) principles that must be fulfilled by law, which if not fulfilled, then the law will fail to be called a law²⁴, or in other words there must be legal certainty. The eight expectations are as follows a legal system consisting of regulations, not based on instantaneous decisions for certain things, the regulation is announced to the public, not retroactive, because it will damage the integrity of the system, made in a formula that is generally understood, there must not be conflicting rules, must not demand an action that exceeds what can be done, it can't be changed often, there must be a match between the rules and daily implementation.

Lon L. Fuller argues that there must be certainty between regulations and their implementation, thus entering the realm of action, behavior, and factors that influence how positive law is implemented. From the explanation of legal certainty above, then certainty can be interpreted in several meanings, among others, there is clarity, does not cause multiple interpretations, does not cause contradictions, and can be implemented. The law must apply firmly in society, containing openness so that anyone can understand the meaning of a legal provision²⁵. One law with another must not be contradictory so that it does not become a source of doubt. Legal certainty means that the legal products in a country must contain clarity, do not cause multiple interpretations, do not cause contradictions, and can be implemented, with the aim of guaranteeing the rights and obligations of every citizen.

Conclusion

The description above, it can be concluded that, in order to realize equitable wages based on Pancasila values and the 1945 Constitution, what must be done is to harmonize the existing rules. Because in Law Number 13 of 2003 concerning Manpower, Article 69 paragraph 1 of Law Number 13 of 2003 concerning Labor, contradicts Article 68 of Law Number 13 of 2003 concerning Manpower (internal contradiction), in addition it also contradicts other laws and regulations, namely the Law of the Republic of Indonesia Number 35 of 2014 concerning Amendments to the Law of the Republic of Indonesia Number 23 of 2002 concerning Child Protection (inconsistency). Then in Article 90 paragraph 2 of Law Number 13 of 2003 concerning Manpower which states that employers can hold a payment suspension,

²⁴ Salahuddin Gaffar and others, 'The Concept of Procedural Law Regarding the Implementation of Collective Agreements with Legal Certainty in Termination of Employment in Indonesia', *Heliyon*, 7.4 (2021), e06690 <<https://doi.org/10.1016/j.heliyon.2021.e06690>>.

²⁵ Syahlan Syahlan, 'Effective and Efficient Synchronization in Harmonization of Regulations Indonesia', *Journal of Human Rights, Culture and Legal System*, 1.1 (2021), 2807-12 <<https://doi.org/10.53955/jhcls.v1i1.7>>.

in this article illustrates legal uncertainty because there are gaps that can be used by employers to pay workers / laborers wages that are not in accordance with the minimum wage which have been specified.

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