

**THE POLICY IMPLEMENTATION OF CORPORATION OF
CONSUMER DISPUTE RESOLUTION (BPSK)
REVIEWED FROM LAW NUMBER 8 YEAR 1999
ON CONSUMER PROTECTION**

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Abstract

The corporation of consumer protection plays an important role in the dispute resolutions that often occur in the community. Its existence is so beneficial for the middle class society who often becomes a dupe of injustice in the economic and business competition. However, in fact, the existence of a corporation of consumer disputes resolution in Indonesia does not have a serious attention from policy makers. The results of this study is that there is an imbalance in the regulation of central and local about the existence of this corporation of consumer dispute resolution. It is particularly on the issue of unclear funding arrangements and there is a misinterpretation between the central government and the regions. Therefore, the middle and the lower class society are not able to compete.

Keywords: Consumer, BPSK, Law No. 8 of 1999

A. INTRODUCTION

The Corporation of Consumer Dispute Resolution (BPSK) is an institution of dispute resolution relates to consumer disputes outside of the judicial process. Taking the concept of alternative dispute resolution (ADR), the BPSK can be a solution to overcome the issues of a high-cost and complicated claiming in the judicial process. Therefore, the future societies who are dealing with the consumer disputes can easily resolve their case. The judicial process somewhat produces the results that are not effective with the cost spent. The consumers have to take a great effort to follow a complicated, long and tiring judicial process. In this condition, the role of BPSK is necessary to help consumers in resolving consumer with a fast, simple, and low-cost dispute.

The current of liberalization and neo-liberalism that affect the global economic system with free-market slogans seem fair and neutral but the fact that it dominates and controls the lower class society. In consumer disputes, the presence of BPSK formed by the government should be able to be part of efforts to protect

weak consumers when consumers disputed by stronger business agents, especially when strong they act as a national or an international major company.

Corporation of Consumer Dispute Resolution (BPSK) in the rules of the Law on Consumer Protection provides that the consumer may organize a claim on business agents through this corporation or in the court, according to the ability of consumers themselves.¹ As a protection from the country, the consumers are given freedom according to their capabilities to resolve disputes with business agents through the Corporation of Consumer Dispute Resolution or through the judges.²

BPSK, which is claimed as the adoption of a model of the Small Claims Tribunal, according to its concept, has potential to become a resolution selection of consumer dispute resolution interested. These potentials are bridging between the simple and flexible mechanisms of ADR (alternative Dispute Resolution) with the mechanism of courts that have the authority. Uniting three factors among consumer, business agents, and government in BPSK becomes the strength to overcome the conflict interests. BPSK serves as a quasi court plus (non-adjudication and adjudication functions) and according to the concept of BPSK juridical, it is domiciled in every city/ town. If it is executed properly, BPSK has fulfilled the management principle of corporation of consumer dispute resolution, as previously described, which is expected that BPSK can provide equitable justice and reduce the burden of the courts.

A number of constraints experienced by BPSK at least there are eight constraints, namely:

1. The institutional constraints
2. The funding constraints
3. The Human Resource Constraints
4. The rule constraints
5. The Development Constraints, Supervision and Coordination
6. The lack of socialization and lack of awareness of consumer law

¹Gredly Laurens Rangka, "Peran Badan Penyelesaian Sengketa Konsumen Menurut Undang-undang Nomor 8 Tahun 1999, *Jurnal Ilmu Hukum Legal Opinion*, Vol.2.Tahun 2014, Hlm.98

²M.Syamsuddin, *Operasionalisasi Penelitian Hukum*, Jakarta: Raja Grafindo Persada, 2007, Hlm.1

7. The lack of response and understanding of the judiciary to the consumer protection policy
8. The lack of public response to the consumer protection laws and BPSK institutions

The constraints above become the constraints that make BPSK does not run properly. Government as a forming BPSK seems less serious in developing BPSK to run optimally, so the impression that seems both central and local government is busier chasing and serving investors than public interest, including the rights of consumers.

The regulation of BPSK is regulated in Law No. 8 year 1999 about consumer protection (UUPK). However, its implementing regulations are still vague and unclear, even some substances are still conflicting one another. For instance, the subsection 56 paragraph 2 of UUPK is mentioned that the BPSK decision has been final and tied. Based on the subsection 54 paragraph 3 of UUPK, it can be requested a legal effort/ an objection to the district court's decision, it means that the power of judicial BPSK still depends on the supremacy of the court, so it is not final decision. In the practice of the objection, application of BPSK decision in the court applies general civil law; therefore, it adds the long process of consumer dispute resolutions.

Based on the description above, this article discusses the implementation of the functions of BPSK and the constraints that obstruct the implementation of the function of BPSK itself.

B. DISCUSSIONS

1. The Policies and Implementation of Consumer Dispute Resolution

Based on the subsection 19 paragraph (1) Law No. 8 year 1999 on Consumer Protection, it is stated that business agents are responsible for providing compensation for damage, contamination and/ or loss of customers due to the consumption of goods and/ or services produced or traded. The compensation has to be implemented within the period of seven (7) days after the date of the transaction. It is appropriate and stated in the subsection 19 paragraph (2) that the

compensation is implemented within the period of seven (7) days after the date of the transaction. If within seven (7) days of this turns out to business actors provide compensation, it will not happen consumer disputes. Nevertheless, conversely if within seven (7) business actors today do not provide compensation, there will be a consumer dispute. Consumers are harmed will take legal actions by claiming the business agents.

Consumer disputes occur when business agents do not provide compensation to consumers within seven (7) days after the transaction. Consumer dispute (conflict) is a condition where the parts of consumers want the business agents do or do not do as desired, but they resist the desire.

Romy Hanitijo provides the sense of disputes as the situation where two or more parties fight for their own purposes that cannot be united and in which each side tries to persuade others of the truth of their stated objectives.³ Joni Emerson defines an understanding of conflict/ dispute. According to him, a conflict is an inconsistency between the parties that will hold and are holding a relationship or partnership.⁴ (Subsection 1 point 8 The Decree of the Industry Minister and Trade Minister No. 350 / MPP / Kep / 12/2001 states another definition. It is defined that consumer disputes are disputes between business agents and consumers demand compensation for damage, contamination and/ or who suffer losses on damage, contamination, and/ or who suffer losses due to the consumption of goods and/ or use the services.

The consumer disputes can be solved through the Corporation of Consumer Dispute Resolution (BPSK) or apply to the judiciary in the consumers' domicile. This dispute completion as contained in subsection 23 of Law No. 8 of 1999 states that business agents who refuse or do not respond or do not fulfill the compensation for the provision of consumer as referred to the subsection 19 paragraph (1), paragraph (2) and paragraph (4) can be sued by the corporation of

³Ronny Hanitijo, *Hukum dan Masalah Penyelesaian Konflik*, Semarang: FH UNDIP, 1984, Hlm.22

⁴Joni Emerson, *Alternatif Penyelesaian Sengketa di Luar Pengadilan (Negosiasi, Mediasi, Konsiliasi, Arbitrasi)*, Jakarta: Gramedia Pustaka, 2001, Hlm. 21

consumer dispute resolution or apply to the judiciary in the consumers' domicile. The completion of consumer dispute also governed in subsection 45, it states that:

1. Every consumers harmed can sue business agents through the institution officiates to resolve disputes between them or through the courts that are in the general court.
2. The resolution of consumer dispute can be reached through the courts or out of the courts based on voluntary choice of the party dispute.
3. Dispute resolution outside the court referred to paragraph (2) does not eliminate criminal liability as regulated in the law.
4. If it does not have dispute mediation outside the court, the claim through the courts can be taken if it is declared unsuccessful by one of the parties or by the parties disputed.

Based on the two subsections mentioned above, namely, subsection 23 and subsection 45, the method of resolution of consumer dispute can be done through the Corporation of Consumer Dispute Resolution (BPSK) and through the courts. It means, the resolution of consumer dispute can be determined out of court (BPSK) and through the courts. The dispute resolutions out of court according to the subsection 47 is held to reach an agreement on the form and the amount of compensation and/ or on certain actions to ensure that it will not happen again or it will not be repeated losses suffered by consumers. The dispute resolutions through the courts according to subsection 48 refer to the provision of general justice regard to the provisions of subsection 45.

Those who can make a claim for lawlessness of business agents provided in subsection 46. According to the provisions of subsection 46 paragraph (1) the claims for lawlessness of business agents can be done by:

- a. The consumer who harmed or heir concerned
- b. A group of consumers who has the same interests
- c. The institution of qualified consumer protections of nongovernmental in the form of corporations or foundations which in their statutes mention the tasks that the objectives of its establishment of organization is for the

importance of consumer protections and they have been carrying out activities according to the statute.

- d. Government and/ or related institute, if the goods and/ or services being consumed or utilized, arises big material losses and/ or dupe.

Claim proposed by a group of consumers, institute of non-governmental consumer protection or the government, is proposed to general courts. It means that this claim should not be proposed to the Corporation of Consumer Dispute Resolution (BPSK). The claim for violation of business actors can be done a consumer or their heirs then proposed to the BPSK and/ or the general courts. The claim of a group of consumers is regulated in the Supreme Court Regulation No. 1 Year 2002 on Claim Schedule of Group Delegation. The claim of group delegation or class action is a procedure of a claim proposal, in which one or more represent a group that propose for himself or themselves and currently represent a group of many people, through fact similarity or institutes between group representatives and members of the group mentioned.⁵ The Protection Institution of Governmental Consumer (LPKSM) can make legal standing, i.e. as a right claim from any individual, group or organization.⁶

2. The Resolution of Consumer Dispute through BPSK

Subsection 1 paragraph 2 of Law No. 8 of 1999 on Consumer Protection provide an understanding for institution of consumer dispute resolution is the institution that responsible for handling and resolving disputes between business actors and consumers. Specifically, BPSK function is as an alternative of consumer dispute resolution outside the court, and this institution is formed at the district/ city.

The members of The Corporation of Consumer Dispute Resolution (BPSK) consist of government representatives, consumers and business actors. Members of each element are at least 3 (three) and a maximum of 5 (five). The Minister appoints the appointment and discontinuance of BPSK members. The

⁵Sudaryanto, *Konsumen Menggugat*, Jakarta: Piramedia, 2003, Hlm.7

⁶Zaim Saidi, *Menuju Mahkamah Keadilan*, Jakarta: Piramedia, 2003, Hlm.40

further provision on the Corporation of Consumer Dispute Resolution (BPSK) is regulated in the Decree of President of the Republic of Indonesia Number 90 Year 2001. As the execution of the duties and authority of Corporation of Consumer Dispute Resolution (BPSK) is regulated in Decree of the Minister of Industry and Trade Number 350 / MPP / Kep / 12/2001. The first establishment of a corporation of dispute resolution (BPSK) is regulated in the Decree of the Minister of Industry and Trade of the Republic of Indonesia No. 605 / MPP / 8/2002 dated August 29, 2002 on the Appointment of Members of Corporation of Consumer Dispute Resolution (BPSK) in the city government of Makassar, Palembang, Surabaya, Bandung, Semarang, Yogyakarta and Medan.

According to the provisions of subsection 52 paragraph a of Law Number 8 year 1999, it is confirmed that the duties and authority of the corporation of consumer dispute resolution carrying out the handling and solving disputes by mediation or arbitration or conciliation. The procedure of consumer dispute resolution through BPSK is regulated in Decree of the Minister of Industry and Trade No. 350 / MPP / Kep / 2002.

The resolution of consumer dispute by BPSK through mediation or conciliation or arbitration is done on choice and consent of the parties concerned. The resolution of consumer dispute is not a process of dispute resolution in stages. The resolution of consumer disputes by conciliation done by the conflicting parties, assisted by the assemblies that act passively as conciliator. The conflicting parties, assisted by the active assemblies that act as mediators, do the resolution of consumer disputes by mediation. The resolution of consumer disputes by arbitration is done completely and decided by the assemblies that act as arbitrator.

The assembly is formed by the Chairman of BPSK, which is an odd number of members at least three (3), which fulfill all the elements, the elements of the government, elements of business agents and consumer elements, and assisted by a court clerk. The assembly decision is final and tied. The resolution of consumer dispute must be implemented no later than 21 (twenty one) working days after the application is received by the secretariat of BPSK. To the decision of the assembly, the dispute parties may submit an objection to the district court

no later than 14 (fourteen) working days from the notification of the assembly the parties disputed accept decision.

The objection to the decision of BPSK, the method of submission is regulated in the Regulation of Supreme Court No. 01 year 2006. The objection is the effort for business actors and consumers who do not accept the BPSK decision. The objection may be proposed on the arbitration decision issued by BPSK. This objection may be proposed either by business actors or by consumers to the district court in the domicile of the consumer law. The objection on the BPSK arbitration decision according to subsection 6 paragraph (3) No. 01 Year 2006 can be proposed if the decision fulfills the requirements of the cancellation of arbitration as provided in subsection 70 of Law No. 30 year 1999 on Arbitration and Alternative of Dispute Resolution, namely:

- a) The letters or documents are proposed in the examination, after adjudication downed, declared false and stated false.
- b) After the BPSK arbitration decision is taken, it is found that the decisive documents are hidden by the other party, or
- c) The decision is taken on the craftiness results conducted by one of the parties in the dispute investigation.

In the case of objection is proposed on the basis of these conditions, the judge may issue a BPSK decision cancellation. In the case of objection is proposed on the other reasons than these requirements, the judges may judge its own consumer concerned. In judging him/ herself, the judges must pay attention to compensation as provided in subsection 19 paragraph (2) Law No. 8 year 1999. The judges must make a decision within 21 (twenty one) days from the first sessions conducted.

Every consumers harmed can apply an application of consumer dispute resolution to BPSK, either in written or spoken, through the BPSK secretariat. The heirs or their endorsers if the consumer dies, ill or elderly, immature, or strangers (foreigners) can also propose the application. The application is proposed in writing will be accepted by BPSK then it is issued a receipt to the applicant. The application is proposed not in writing, noted by BPSK secretariat in a format

provided, and given a signature or stamp by the consumer, or their heirs or their endorsers and the applicant is given a receipt. The application file, both written and not written recorded by BPSK secretariat and dated and registration number. The application of consumer dispute resolution in writing must contain true and complete on:

- a. The consumers' full name and address, heirs or their endorsers accompanied by proof of identity.
- b. The business agents' full name and address.
- c. The goods or services complained
- d. The acquisition proof (vouchers, receipts and other evidence documents).
- e. The description of the place, time and date of the goods and services acquired.
- f. The witnesses who know the goods and services acquired.
- g. The authentic goods and delivery service activities, if it is available.

If the application is accepted, then it is proposed by the trial. The chairman of BPSK calls business actors in written with an application copy of the consumer dispute resolutions, at the latest within three (3) working days after the application of dispute resolution accepted correctly and completely. In the application letter, it is clearly stated on the day, hour and place of the court and the obligation of business actors to provide a letter of response to consumer dispute resolution and delivered on the day of the first trial. It is carried out not later than the working days to 7 (seven) after accepting the application of consumer dispute resolution by BPSK. The assembly meets on this day, date and time has been stated, and in the assembly, court should maintain the order courts.

Conciliation is a process of consumer dispute resolution outside of court with BPSK to unite the parties disputed and the resolution is submitted to the parties. The assembly delivering consumer disputes by conciliation has the task:

- a. Calling consumers and businesses concerned.
- b. Calling witnesses and expert witnesses if necessary
- c. Providing a forum of consumers and business actors about law regulations in the field of consumer protection.

The procedures for consumer dispute resolution by conciliation are:

- a. The assembly fully submits dispute resolution process to consumers and business agents concerned, both the form and the amount of compensation.
- b. The assembly acts as a conciliator
- c. The assembly receives the results of consumers' consultation and business agents and issues a decision

Mediation is the process of consumer dispute resolution outside of court by the BPSK as an advisor and solutions submitted to the parties. In the court by mediation, the assembly solves disputes by mediation have the tasks:

- a. Calling the consumers and business agents disputed
- b. Calling the witnesses and expert witnesses if needed
- c. Providing a forum for consumers and business agents disputed
- d. Actively reconciling consumers and business agents disputed.
- e. Actively providing advices or recommendations of consumer dispute resolution according to the legislation in the sector of consumer protection.

The procedures of consumer dispute resolution by mediation are:

- a. The assembly fully submits the process of consumer dispute resolution and business agents concerned, both the form and the amount of compensation.
- b. The assembly is active as a mediator by providing advice, guidance, advice and other efforts to resolve disputes.
- c. The assembly receives the results of consumer conferences and business agents and removes the power.

Arbitration is the process of consumer dispute resolution outside of the court; in this case, the disputing parties fully submit dispute resolution to BPSK. In the resolution of consumer disputes by arbitration, the parties choose the arbitrator of BPSK members who represent business agents, governments and consumers as councilor. An arbitrator is selected by the parties, and then chosen by the third arbitrator from BPSK members who represent the government as head of the assembly. In the court is obliged to provide guidance to consumers and business agents concerned. By the permission of the chairperson of the assembly,

consumers and business agents concerned can learn all the files related to the court and make the necessary citations.

On the first court day, the chairperson of the assembly should reconcile the two parties disputed, and if the peace is not achieved, the reading begins then the court the consumers' claim and business agents' answer letters. The chairperson of the assembly provides an opportunity to consumers and business agents disputed to explain things disputed.

On the first court day before business agents give the answer, the consumers can revoke his claim to make a statement letter. In the claim is alienated by the consumers, and then the courts firstly the assembly must announce that the claim is alienated. If the process of consumer dispute resolution is at peace between consumers and business agents disputed, the assembly makes the decision in the form of the peace establishment.

In terms of business agents and consumers are not presence on the first court day the assembly provides a last chance for consumers and business agents to present at the second court to bring the evidence needed. The second day is held no later than 5 (five) working days from the first court day and notified by summons to consumers and business agents by the BPSK secretariat. When the second court the consumer is not presence, the claim is stated disqualified by law, otherwise if business actors are not present, then the consumer claim is granted by the assembly without the presence of business actors.

The results of consumer dispute resolution by conciliation or mediation is made in a written agreement signed by consumers and business agents. The written agreement is confirmed by the decisions of assembly, which is signed by the chairperson and members of assembly. Likewise, the result of the consumer by arbitration is made in the form of the assembly decision, which is signed, by the chairperson and members of assembly. The decision is the BPSK decision. BPSK decision can be:

- a. The peace
- b. The claim rejected and
- c. The claim granted

In terms of activities granted, then the verdict assigned duty must be done by business agents. The duties are in the form of the fulfillment:

- a. The compensation
- b. The administrative sanctions such as the determination of the compensation of Rp. 200,000,000 (two hundred million rupiah).

The chairman of BPSK notifies the assembly decision in writing to consumers' address and business agents disputed, not later than seven (7) working days after the decision is read. Within 14 working days since the BPSK decision informed, consumers and business agents disputed should declare to accept and reject the BPSK decision. They who refuse the BPSK decision may propose an objection to the court no later than within 14 (fourteen) working days after the decision is read by BPSK. The procedures of an objection application to the BPSK decision are regulated in the Regulation of Supreme Court No. 1 year 2006. On the other hand, the business agents stated a BPSK decision, should do the decision not later than within seven (7) working days since they state to accept the BPSK decision. The business agents who reject the BPSK decision, but they do not propose a claim after the deadline of 7 (seven) days they are considered to accept the decision and oblige to do the decision not later than five (5) working days after the deadline of submitting an objection exceeded. If the business actors do not perform their obligations, the BPSK submits the decision to the investigators to conduct the investigation according to the provisions of the current regulation.

The BPSK decision is a final decision and it has persistent legal force. To action of BPSK, requested an execution determination by BPSK to the state court in the place of consumers harmed. The execution or implementation contains a meaning that the defeated party does not want to obey the decision voluntarily, so the decision should be imposed to him by the legal force help.⁷ The execution determination is also regulated in subsection 7 Perma No. 1 year 2006 on the Procedures of Complaints Application on the Decision of Corporation of Consumer Dispute Resolution (BPSK).

⁷R. Subekti, *Hukum Acara Perdata*, Bandung: Bina Cipta, 1989, Hlm.130

The consumers submits the execution application of the BPSK decision which is not submitted an objection to the district court in the domicile of the consumers concerned or in the BPSK jurisdiction issues a decision. The execution applications of the BPSK decision, which have been inspected by an objection procedure determined by the district court, decide the case of the objections concerned.

The district court must issue a decision of an objection within the period of 21 (twenty-one) days after the receipt of objections. To the decision of the district court, the parties no later than fourteen (14) days can submit a cassation to the Supreme Court. The Supreme Court must issue a decision no later than 30 (thirty) days after receiving the application of cassation.

3. The constraints in implementing the Role of Corporation of Consumer Dispute Resolution in Indonesia

There are some constraints faced by the Corporation of Consumer Dispute Resolution to resolve the first consumer disputes. Firstly, the institutional constraints can be viewed from the complexity of the role assigned to the Corporation of Consumer Dispute Resolution. Therefore, it makes the constraints on the implementation. In this case, it can be described on the role given to the Corporation of Consumer Dispute Resolution, namely: the role as the provider of dispute resolution as mediators, conciliators, arbitrators, the role as a public consultant or public defender, the role as administrative regulator or as a supervisor and giver of sanctions, the role of ombudsman or adjudicator.

Based on paragraph 52 of the laws of Consumer Protection, Minister of Commerce and Industry Decree No. 350 / MPP / Kep / 12/2001 are:

- a. Carrying out the handling and solving of consumer disputes by conciliation, mediation and arbitrate.
- b. Providing consultation on consumer protection
- c. Carrying out a supervise on the inclusion of standard clauses
- d. Reporting to the investigator in case of violation of consumer protection laws

- e. Receiving written or unwritten complaints from consumers on violations of consumer protection
- f. Conducting research and examination of consumer protection disputes
- g. Calling business actors that expected doing violation of consumer protection
- h. Calling witnesses or expert witness or every person suspected of knowing a violation on consumer protection
- i. Asking for help to the investigator to present witnesses, expert witnesses, or everyone in point g and h does not fulfill to meet the call of the Corporation of Consumer Dispute Resolution (BPSK)
- j. Obtaining, analyzing and/ or assessing mail documents or other evidence to investigation and/ or inspection
- k. Deciding and establishing whether there is harm to the consumer or not
- l. Notifying the judgment to business actors that doing a violation on consumer protection
- m. Imposing an administrative sanction to business actors who violate the provisions of the consumer protection law.⁸

The second constraints are; funding, one of the factors of less optimal Corporation of Consumer Dispute Resolution is due to lack of financial support both from the Central Government and from Local Government. Distributing this budget is used as an honorarium member/ secretariat of Corporation of Consumer Dispute Resolution charged to the State Budget (APBN), while operating expenses charged to the Regional Budget (APBD) Regency/ City one another, but on the amount of budget allocation is not regulated in detail. Moreover it concerns the readiness of the budget allocation is not maximum of Corporation of Consumer Dispute Resolution, during this regional participation in the allocation of funds to the effectiveness of the Corporation of Consumer Dispute Resolution

⁸Imam Budi Santosa dan Dedi Pahroji, "Optimalisasi Peran dan Fungsi Badan Penyelesaian Sengketa Konsumen dalam Penyelesaian Sengketa Konsumen di Kabupaten Karawang", *Majalah Ilmiah Solusi Unsika*, Vol.11, No.24, Ed.Sep-Nop 2012, Hlm.3

is still very low, this affects the performance of the Corporation of Consumer Dispute Resolution.⁹

C. CONCLUSION AND SUGGESTION

1. Conclusion

BPSK is a beneficial institution to help the lower and middle class society in looking for legal justice that can fulfill the legal principle of justice with a quick and low-cost process because the longer the process takes, the more expensive it will be. There are several constraints obstruct. First, as described above that Corporation of Consumer Dispute Resolution has much responsibilities including tasks related to the resolution of disputes and tasks outside of the dispute resolution (like guidance and supervision). Second, it related to funding constraints. There is a lack of the rules explicitly and in detail regulating the rational allocation that should be allocated to the Corporation of Consumer Dispute Resolution.

2. Suggestions

- 1) To minimize the institutional constraints, the researchers suggest to immediately revise of the Consumer Protection Law on the complexity of the task of BPSK as dispute resolution institutions, in the terms of funding research, he suggests that there must be an explicit and detail rule to regulate the rational allocation that should be allocated to the Corporation of Consumer Resolution.
- 2) The Corporation of Consumer Dispute Resolution in creating smart and aware consumers and business actors of their rights and obligations takes more efforts by providing socialization intensively and sustaining to consumer protection that is initiated by the Corporation of Consumer Dispute Resolution (BPSK). Therefore, there will be smart consumers and business actors who aware of their rights and obligations.

⁹*Ibid.*

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