

Divorce Outside the Religious Courts in the Citereup Bogor Community

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Abstract:

The divorce regulations that apply in Indonesia are stated in article 39 of the 1974 Law (1). Divorce only can done in front hearing Court after the relevant Court tried and was unsuccessful reconcile second both parties. (2). For do divorce must Enough reason that between husband the wife will not live in harmony as husband and wife. (3). System method divorce in front hearing Court in set in regulation separate legislation. However, this regulation does not apply to the entire community of Citereup which still adheres to Islamic Sharia law where divorce pronounced by a husband to a wife wherever the law is valid falls under divorce. The research method used is qualitative research based on field research *which* is oriented towards interviews, observation and documentation in order to obtain clear and accurate data. The results of the research are that the public's perception regarding divorce carried out outside the Religious Courts is that it is legal, the causal factors are: Lack of legal awareness in the community, costs are considered too burdensome for the parties to divorce, divorce procedures in the Religious Courts are considered complicated by the community. The impacts felt by society include: Divorce that has no legal force, difficulty in officially remarrying, unequal distribution of responsibilities.

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Aturan perceraian yang berlaku di Indonesia tercantum dalam pasal 39 UU (1) tahun 1974. Perceraian hanya dapat dilakukan di depan sidang Pengadilan setelah Pengadilan yang bersangkutan mencoba dan tidak berhasil mendamaikan kedua belah pihak. (2). Untuk melakukan perceraian harus cukup alasan bahwa antara suami dengan istri tidak akan hidup rukun sebagai suami istri. (3). Sistem tata cara perceraian di depan sidang pengadilan diatur dalam peraturan perundang-undangan tersendiri. Namun peraturan tersebut tidak berlaku bagi seluruh masyarakat Citereup yang masih menganut hukum syariat Islam dimana perceraian yang dilakukan oleh suami terhadap istri dimanapun hukumnya berlaku termasuk dalam kategori perceraian. Metode penelitian yang digunakan adalah penelitian kualitatif berdasarkan penelitian lapangan yang berorientasi pada wawancara, observasi dan dokumentasi guna memperoleh data yang jelas dan akurat. Hasil penelitian adalah persepsi masyarakat mengenai perceraian yang dilakukan di luar Pengadilan Agama adalah sah, faktor penyebabnya adalah : Kurangnya kesadaran hukum masyarakat, biaya yang dianggap terlalu memberatkan pihak yang bercerai, tata cara perceraian di Pengadilan Agama dianggap rumit oleh masyarakat. Dampak yang dirasakan masyarakat antara lain: Perceraian yang tidak mempunyai kekuatan hukum, sulitnya menikah kembali secara resmi, pembagian tanggung jawab yang tidak merata.

Key words: *Divorce, Out of Court, Bogor.*

Introduction

In general, the process of divorce is often associated with religious laws and handled by religious courts. However, in some communities, especially those with specific cultural or customary characteristics, there may be practices of divorce outside the realm of religious courts. One example is the Citereup community in Bogor. The Citereup community in Bogor is known for its distinctive cultural and customary identity. In this context, the divorce process may involve customary norms recognized and practiced by the local population. Some reasons behind opting for a divorce system outside religious courts may involve factors such as religious beliefs, family traditions, or efforts to preserve inherited cultural values.

It is important to understand that the practice of divorce outside religious courts does not necessarily indicate a rejection of religious norms but rather reflects

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the social and cultural dynamics evolving within the Citereup Bogor community. In this situation, an understanding of the local context and cultural values is crucial for accurately responding to and depicting this phenomenon.

In connection with the paragraphs above, Islam explains or provides information that humans are social beings. Humans as social creatures always need other humans in society to give and benefit from each other (Otoman, 2018) therefore humans are created in pairs as are animals and plants. As Allah says in the Qur'an, namely *وَمِنْ كُلِّ شَيْءٍ خَلَقْنَا زَوْجَيْنِ لَعَلَّكُمْ تَتَذَكَّرُونَ* meaning: "And We created everything in pairs so that you may remember the greatness of Allah" (QS.AL-Dzariyat 51:49). Allah created humans to be different from other creatures, they were given reason to be able to differentiate between right and wrong, able to behave like a thinking person, of course by following the values and norms that apply in society. So, to maintain human honor and dignity, Islam regulates relations between men and women through a legal marriage in accordance with Islamic Sharia.

Law No. 1 of 1974 Chapter 1 Article 1 states that: "Marriage is an inner and outer bond between a man and a woman as husband and wife with the aim of forming an eternally happy family (household) based on the belief in the Almighty God." The purpose of marriage was also explained again by Yunus Ahyuni that by forming a household one can continue the offspring and ensure that the household can create peace based on love and affection.¹

According Fitri Every husband and wife will definitely dream of a marriage relationship that is harmonious, prosperous, peaceful and lasts a long time. However, in reality, a marriage does not always run smoothly in accordance with the vision, mission and initial goals of forming a household with an Islamic Sharia perspective. The problems in the household are so complex and varied, this can be illustrated by the many arguments between the two partners which are caused by several factors such as economic, social, family factors, third people in the relationship and so on, where the problems are allowed to drag on until they end in separation or divorce.²

¹ Asep Awaludin, "Perceraian di luar pengadilan agama (studi praktik perceraian di Desa Mekarjaya Kec. Rumpin Kab. Bogor)" (bachelorThesis, Fakultas Syariah Dan Hukum Universitas Islam Negeri (UIN) Syarif Hidayatullah Jakarta, 2019), <https://repository.uinjkt.ac.id/dspace/handle/123456789/45491>.

² yulisa Fitri, Jamaluddin Jamaluddin, And Faisal Faisal, "Analisis Yuridis Perceraian Di Luar Pengadilan Menurut Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan Dan Menurut Pendapat Ahli Fikih Islam," *Suloh: Jurnal Fakultas Hukum Universitas Malikussaleh* 7, no. 1 (November 22, 2019): 29–54, <https://doi.org/10.29103/sjp.v7i1.1980>.

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Divorce is not a haram thing to do, but religion really hates things in a marriage, as the Messenger of Allah said: *أَبْغَضُ الْحَلِّ* "The act that Allah Ta'ala hates is divorce" (HR. Abu Daud and Al Hakim). Divorce is permissible if it is proven by several reasons in the form of clear demands and can meet legal criteria. It cannot be denied that if in the family there is a problem that can no longer be resolved in a family way and if the problem is more detrimental if it is maintained then divorce is the last option. which is the way out.

Finalizing a divorce must be in accordance with applicable law, namely following the procedures stipulated in the Marriage Law and the Compilation of Islamic Law. This is written in the provisions of article 39 of Law Number 1 of 1974 which states that "divorce can only be carried out before an authorized court hearing" which means that the dissolution of a marriage will not be valid if it is not carried out through applicable legal channels. When initially married legally in the presence of 2 witnesses in front of the headman and registered at the Office of Religious Affairs (KUA), then settle the divorce case legally before the local Religious Court.³

In Article 14 of Government Regulation no. 9 of 1975 concerning procedures for divorce, it is written that "a husband who has entered into a marriage according to the Islamic religion, who wants to divorce his wife, submits a letter to the Court at his place of residence, containing notification that he intends to divorce his wife along with the reasons and asks the Court that a hearing be held for that purpose".⁴

It is confirmed by Article 15 of the Compilation of Islamic Law (KHI) that "divorce can only be carried out in front of a Religious Court after the Religious Court has attempted and failed to reconcile the two parties." Furthermore, KHI through article 130 reiterates that "Religious Courts can grant or reject the request and against that decision appeals and cassation can be sought. In this regulation, the Court is of the opinion that if the husband and wife in question cannot be reconciled enough to live in harmony in the household, then the request for divorce will be granted in accordance with all considerations.

³vivi Hayati, "Dampak Yuridis Perceraian Di Luar Pengadilan.," *Jurnal Hukum Samudra Keadilan* 10, no. 2 (2015): 215–27.

⁴SofiaTMul Majid, Yasin Arief, and Nur'l Yakin, "Praktik Perceraian Di Luar Pengadilan Agama Dalam Perspektif Kompilasi Hukum Islam (Studi Kasus Desa Sirahan Kecpraktik Perceraian Di Luar Pengadilan Agama Dalam Perspektif Kompilasi Hukum Islam (Studi Kasus Desa Sirahan Kec. Cluwak Kab. Pati (2017)," *Prosiding Konstelasi Ilmiah Mahasiswa Unissula (KIMU) Klaster Humanoira*, no. 0 (December 17, 2021), <http://jurnal.unissula.ac.id/index.php/kimuhum/article/view/8255>.

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A good divorce is a divorce that creates benefits for both partners in a manner determined by Islamic Sharia and law. Qadar said The existence of divorce is not only discussed explicitly, but is addressed legally in the law regarding marriage. In accordance with article 39 which reads: (Law) (1) Divorce only can done in front hearing Court after the relevant Court tried and was unsuccessful reconcile second both parties. (2) For do divorce must Enough reason that between husband the wife will not live in harmony as husband and wife. (3) System method divorce in front hearing Court in set in regulation separate legislation.⁵

The law explains that divorce must be carried out in front of a court session by following all the demands and procedures for divorce that have been regulated in the law, however, this law does not apply to some people in the villages, including the people of Citeureup District, Regency. Bogor is still largely guided by fiqh law that the divorce vowed by a husband to his wife outside the Religious Court session is valid and ignores the statutory law which confirms that a valid divorce must be vowed in front of a Court session.⁶

Based on the results of temporary observations that the researcher obtained in the field, curiosity arose from the researcher regarding the perceptions or views of the Citereup community regarding divorce outside the Religious Court hearings and the factors that the Citereup community had in carrying out divorce outside the Religious Courts and what impacts were experienced by the Citereup community. become a victim of divorce outside the Religious Court hearing

Method

To help research get objective, focused and structured answers, this research uses qualitative research, as stated by Iswadi, qualitative is research that stems from an inductive mindset which is based on objective, participatory observation of a social symptom (phenomenon) and Alan Bryman explains that typically qualitative research is always related to participatory observation, semi-interviews, text study and various linguistic techniques such as conversation and discourse analysis.⁷ This research is also based on field research which is oriented towards interviews,

⁵nurul Qadar, "Perceraian Di Luar Pengadilan Pada Masyarakat Muslim Desa Sumberharjo Kecamatan Prambanan Kabupaten Sleman" (skripsi, UIN Sunan Kalijaga Yogyakarta, 2010), <https://digilib.uin-suka.ac.id/id/eprint/4036/>.

⁶Muhamad Ridho, "Itibat Nikah Terhadap Pelaku Perceraian Di Luar Pengadilan Dan Implikasi Hukumnya: Studi Kasus Di Pengadilan Agama Serang," *Bil Dalil: Jurnal Hukum Keluarga Islam* 1, no. 02 (December 31, 2016): 81-98, <https://doi.org/10.32678/bildalil.v1i02.124>.

⁷ Yusuf A. Muri, *Metode Penelitian Kuantitatif, Kualitatif & Penelitian Gabungan* (Prenada Media, 2016).

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observation and documentation.⁸ To find answers to this research problem, researchers went directly into the field by getting closer to the community in order to obtain clear and accurate data. This research is descriptive in nature to present a complete picture of the social setting or is intended to explore and clarify a situation, condition, phenomenon or social reality regarding divorce outside the Religious Court hearings.

Discussion

Based on the field analysis, it has been found that many residents of Citereup have minimal legal awareness and understanding of the consequences of divorces conducted outside the Religious Courts, affecting both the divorced wives and the future of their children. Numerous wives bear the responsibility for household matters, including the costs of their children's education, and live independently without assistance from their husbands. In this context, the lack of legal awareness among the residents of Citereup can have significant social and economic impacts, particularly in terms of divorces taking place outside the framework of religious law. The research indicates that a considerable number of individuals do not fully comprehend the legal rights and obligations pertaining to marriage and divorce. This lack of understanding exacerbates the situation, especially for women, who often face substantial social and economic consequences. Field studies show that many wives end up shouldering various burdens independently, such as daily living expenses and their children's education, following a divorce.

In many cases, wives are found struggling to meet the economic needs of the family due to the separation from their husbands' financial contributions. This creates economic inequality that can negatively impact the overall family well-being. The impact is further intensified by the lack of social support and economic safety nets for women experiencing divorce outside the realm of religious law. Furthermore, divorces in Citereup often impose additional burdens on women regarding family responsibilities and the education of their children. Many wives encounter difficulties in maintaining family stability after divorce, and this can adversely affect the development of the children. Children's education often becomes a casualty in this context, with many facing barriers to accessing quality education.

⁸ Iswadi Iswadi, Neti Karnati, and Ahmad Andry B, *STUDI KASUS Desain Dan Metode Robert K.Yin* (Penerbit Adab, 2023).

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From a legal perspective, there is confusion and ambiguity regarding the rights and legal responsibilities of divorced couples in Citereup. Limited legal knowledge leads to a lack of awareness of rights related to joint assets, alimony, and custody rights. This complicates the divorce process and can result in unfair property division and family rights. Moreover, the psychological impact of divorce in Citereup is also a noteworthy aspect. Those involved, especially children, may experience emotional stress and difficulties adapting to the changes in family conditions. Mental and emotional well-being becomes a crucial focus in this context, and the lack of psychological support can have long-term consequences for the individuals involved.

In summary, divorces in Citereup without involvement of the Religious Courts create complex challenges involving legal, social, economic, and psychological aspects. Efforts to enhance legal awareness among the residents, support those involved, and develop supportive mechanisms within the community can be crucial steps in addressing the negative impacts of divorces outside the realm of religious law.

In essence, the law in Indonesia divorce law has been regulated in the Marriage Law and the Compilation of Islamic Law as currently enforced, however, the majority of the population in Indonesia is Muslim so that Islamic legal rules are given priority among the community, this creates a dilemma for the community in the process of resolving divorce cases.⁹ KHI is a reference used by the panel of judges at the Religious Courts to decide cases. The content of KHI is a combination of Islamic law and positive law in Indonesia. This means that what is written in the KHI is also based on fiqh law, madhhab and the opinions of ulama, therefore the KHI should be strong enough to be used as legal guidance by the community.

According Ariva the dilemma felt by society will be answered if society itself understands the proper coherence between Islamic law and positive law in the form of KHI regarding divorce regulations. Complying with these rules will not be detrimental to society, there is also no manipulative side that policy makers exploit towards society, regulations are made solely to bring order to administration in society and the state, so matters in the household sector which are carried out according to Islamic law for Muslims in Indonesia include Divorce is the authority

⁹ Fifi Oktari, Yusefri Yusefri, and Lutfy El-Falahi, "Tindakan Perceraian Di Luar Pengadilan Menurut Persepsi Pelaku Perceraian Studi Kasus Di Kecamatan Curup Timur" (diploma, IAIN CURUP, 2018), <http://e-theses.iaincurup.ac.id/163/>.

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of the Religious Courts as written in Law Number 50 of 2009 concerning Religious Courts by following the applicable provisions and procedures.¹⁰

Most of the people of Tarikolot Village know the positive legal rules in Indonesia, regarding divorce which must be carried out in the Religious Courts, but the community does not implement them and ignores the impact of this problem. The public's perception regarding divorce in the Religious Courts is that they think that the Religious Courts are a place to legalize divorce that has been carried out between husband and wife outside the court, which is clearly wrong. No matter how it is said that they are divorced religiously, in the Religious Court this opinion is not recognized as valid and both parties are still considered to have the status of husband and wife who are still married. In order to carry out a divorce, the husband must pledge it directly in front of a panel of judges to the wife based on the results of the reconciliation efforts by the mediator so that it is tried and decided directly by the panel of judges concerned.

The factor that causes people not to process their divorce in the Religious Courts is a form of baseless reason because the public's opinion regarding the provisions of divorce procedures in the Religious Courts is not as complicated as what the public thinks. It's complicated and difficult if people don't ask the informants/legal consultants at the Religious Courts directly who are ready to provide services to people in need. The divorce process will not last long if both parties have strong reasons and evidence in their submission, as long as both parties are committed to being present at every trial, the divorce process will not be delayed by the panel of judges concerned. This complicated assumption only applies to those who don't want to find out and don't think long about the impact they will receive in the future if they don't process their divorce directly in the Religious Court.

Apart from that, the community also feels burdened by the costs of litigating at the Religious Courts, as stated by the source above, that they cannot afford to pay such costs to file a divorce process at the Religious Courts. If people are burdened with paying for administration, the solution offered is to apply for free for economically disadvantaged people, by attaching specified conditions. Everything can become easier if people find out about the legal assistance that is available, nothing is burdensome and nothing complicates the path to goodness as long as there is a will. Many couples who divorce forget their obligations as parents

¹⁰ Triva Ariva, "Perceraian Di Luar Pengadilan Agama Pada Masyarakat Desa Batang Malas, Kecamatan Tebing Tinggi Barat, Kabupaten Kepulauan Meranti" (bachelorThesis, Fakultas Syariah dan Hukum Universitas Islam Negeri Syarif Hidayatullah Jakarta, 2021), <https://repository.uinjkt.ac.id/dspace/handle/123456789/57832>.

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and husbands. A wife does not get the rights she should have and a child also does not get the rights from his father after the divorce of his parents, as is often experienced by the people of Citereup, but all these problems certainly cannot be fought for legally because the divorce that is carried out does not have legality or has no legal force. If the divorce process follows applicable law, the wife is entitled to the following rights:

Divorce divorce:

Application for divorce from husband to wife, in accordance with article 149 KHI then the wife is entitled to:

1. Mut'ah that is worthy of her ex-husband, whether in the form of money or objects, unless the ex-wife is qabla al dukhul
2. Support, food and kiswah for ex-wife during iddah, unless she has been given talak ba'in or nusyuz and is not pregnant
3. Repayment of the dowry that is still owed in full and half if qabla al dukhul
4. Hadhanah fees for children who are not yet 21 years old
5. Entitled to previous maintenance if during the marriage the husband did not provide maintenance
6. Women have the right to joint property, divided according to the provisions as stated in articles 96 and 97 of the KHI
7. Women also have the right to obtain hadhanah rights for children under 12 years of age.¹¹

Divorce:

A petition for divorce is made by the wife to the husband to the Religious Court, if the petition is granted by the panel of judges then the wife is entitled to:

1. Entitled to previous maintenance, if during the marriage the husband did not provide maintenance
2. Women are blessed with joint property, divided according to the provisions as stated in articles 96 and 97 of the KHI
3. Women have the right to obtain hadhanah rights for children under 12

¹¹ Amelin Heranti Amelin Heranti, "Dampak Perceraian Di Luar Pengadilan Terhadap Hak Nafkah Anak (Studi Kasus Di Desa Mendala Kecamatan Sirampog)," *Khuluqiyya: Jurnal Kajian Hukum Dan Studi Islam* 4, no. 1 (January 31, 2022): 18-49, <https://doi.org/10.56593/khuluqiyya.v4i1.77>.

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years of age.¹²

Children's rights as a result of divorce between parents:

1. Every child has the right to receive good education, health, home and living environment, both physically and mentally, including receiving an outpouring of love
2. All costs for the child's life are the responsibility of the father and mother
3. The right to meet the father and mother of every child after the divorce of the father and mother.

Maryati said the impact caused by unregistered divorce as written above does not seem to be known and understood by some of the people of Citereup, as evidenced by several community perceptions that were conveyed at the time the research was conducted.¹³ The lack of legal awareness has a serious impact on the future of households that divorce outside the Religious Courts because the children who have the greatest potential to become victims of this problem apart from the wife are the children. The most severe impact will be experienced by children, even though the rights and obligations of parents towards children will not be terminated even if the parents are divorced. As stated in article 41 of Law No.1 of 1974, namely:

1. Both mother and father are still obliged to care for and educate their children solely based on the child's interests. If there is a dispute regarding control of the children, the Court gives its decision;
2. The father is responsible for all maintenance and education costs required by the child;
3. If the father is in fact unable to fulfill these obligations, the Court can determine that the mother also bears the costs;
4. The court can require the ex-husband to provide living expenses and/or determine obligations for the ex-wife.

¹² Muhammad Isa, "Perceraian Di Luar Pengadilan Agama Menurut Perspektif Undang-Undang Nomor 1 Tahun 1974 Dan Kompilasi Hukum Islam (Suatu Penelitian di Wilayah Hukum Mahkamah Syar'iyah Aceh Besar)," *Jurnal Ilmu Hukum* 2, no. 1 (February 12, 2014), <https://jurnal.usk.ac.id/MIH/article/view/4579>.

¹³ Maryati Maryati, "Akibat Hukum Terhadap Perceraian Yang Dilakukan Di Luar Pengadilan Agama Merlung Kabupaten Tanjung Jabung Barat," *Jurnal Ilmiah Universitas Batanghari Jambi* 22, no. 3 (October 31, 2022): 1618-23, <https://doi.org/10.33087/jiubj.v22i3.2606>.

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It is clearly recorded that parents' obligations to their children after divorce need to be understood by all parents who decide to end their relationship as husband and wife, that children should not be affected by domestic problems caused by their parents, however, in reality, children are still victims. In article 41 of Law No. 1 of 1974, as written above, all points apply to divorces carried out in Religious Court trials. Where the Court has the authority to regulate all the needs of children and wives after divorce which are submitted to the husband in writing.

This is different from divorce outside the Religious Courts, which cannot require the husband to fulfill these needs. This problem becomes more complex due to the wrong divorce process, the impact of which is that the burden and responsibility becomes unbalanced because many people shift it to one party, as is often experienced by the people of Citereup.

Conclusion

Based on the analysis and discussion above it can be concluded that, the field analysis reveals that many residents of Citereup lack legal awareness and understanding of the consequences of divorces conducted outside the Religious Courts. This has significant social, economic, and legal implications, particularly for divorced wives and their children. The research highlights a notable lack of comprehension among the community regarding legal rights and obligations related to marriage and divorce, exacerbating the challenges faced, especially by women. The impact on divorced wives includes shouldering various burdens independently, such as household expenses and children's education costs. Economic inequality and a lack of social support further intensify the challenges faced by women experiencing divorce outside the religious legal framework. The consequences extend to family stability and the well-being of children, with education often becoming a casualty.

From a legal perspective, confusion and ambiguity surrounding the rights and legal responsibilities of divorced couples in Citereup add to the complexities. The lack of legal knowledge contributes to difficulties in property division, alimony, and custody rights. The psychological impact, especially on children, is also a noteworthy concern, leading to emotional stress and difficulties adapting to changing family conditions. Moreover, the discussion emphasizes the dilemma faced by the community in choosing between Islamic law and positive law in Indonesia, particularly in the context of divorce regulations. The current legal framework, including the Compilation of Islamic Law, plays a crucial role in

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guiding the community through divorce proceedings, yet challenges persist due to limited legal understanding.

Specifically, in the context of Citereup, divorces outside the Religious Courts contribute to unregistered divorces, leaving individuals unaware of their legal rights and obligations. This results in a lack of legal force, impacting the entitlements of wives, children, and the responsibilities of parents after divorce. The community's perception of the Religious Courts as a place for legalizing pre-existing divorces is incorrect, leading to complications in legal recognition. Addressing these challenges requires efforts to enhance legal awareness, provide support to those involved, and develop community-based mechanisms to navigate the complexities of divorce. Additionally, promoting understanding between Islamic law and positive law is crucial to resolving the perceived dilemma within the community. In essence, the discussion underscores the need for comprehensive legal education, accessible legal assistance, and community engagement to bridge the gap between legal regulations and public awareness in Citereup. A harmonious alignment between Islamic and positive law can contribute to a fair and just resolution of divorce cases, ultimately benefiting the well-being of families and children in the community.

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