

DETERRENCE AND ERADICATION OF GRATIFICATION CRIME

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Abstrak. *This study examines the principles that can deter and eradicate gratification as part of the corruption crime. This study uses a normative juridical research method. The data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The collected legal material is then analyzed using qualitative data analysis methods, which will conclude the research's object. The results show that the deterrence and eradication of gratification crime have been regulated in Article 12 B and Article 12 C of Law No. 20 of 2001. In addition, this provision contains an encumbrance of reverse proof, which aims to simplify the process of proving illegal receipts and indications as a bribery crime for civil servants or state administrators. The principles in deterrence and eradication of gratification crime include legal certainty, transparency, accountability, public interest, proportionality, and respect for human rights. Therefore, it is recommended to CEC, civil servants or state administrators, and the community to practice the principles of deterrence and eradication of gratification crime. In this case, Indonesia can be released from the shackles of criminal acts of corruption in the future.*

Keywords:
*Corruption;
Deterrence and Eradication;
Gratification;
Principle.*

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INTRODUCTION

Corruption is not a new problem in Indonesia. Various groups consider that corruption has become a part of life, even as a system and integrated with state government administration.¹ Many daily habits of individuals and society are carried out without realizing that these habits are corruption or the seeds of corruption.² On the other hand, considering the background that one of the factors causing the increase in corruption in several countries is systemic political changes. So these factors not only weaken or destroy socio-political institutions but also legal institutions. In addition, preventing corruption by using a set of existing laws and regulations still has many

¹Dharmawan, N. A. S. (2018). Etika, Agama, dan Cinta sebagai Modal Dasar Akuntan dalam Memberantas Korupsi. *JIA (Jurnal Ilmiah Akuntansi)*, 3(1), p. 17.

²Mubayyinah, F. (2017). SEMAI: Sembilan Nilai Anti Korupsi dalam Pendidikan Anak Usia Dini. *Al-Hikmah: Indonesian Journal of Early Childhood Islamic Education*, 1(2), p. 235.

failures.³ Such a situation will destabilize democracy as the main joint in the life of the nation and state, paralyzing the values of justice and legal certainty, and further away from the goal of achieving a prosperous society.

Article 1 point 1 of Law of the Republic of Indonesia Number 19 of 2019 on the Second Amendment to Law Number 30 of 2002 on the Corruption Eradication Commission (herein after referred to as Law No. 19 of 2019), explains that “the *Criminal Act of Corruption is a criminal act referred to in the law regulating the Eradication of the Criminal Act of Corruption.*” From this provision, it can be understood that what is meant is the Law of the Republic of Indonesia Number 20 of 2001 on Amendment to Law Number 31 of 1999 on Eradication of the Criminal Act of Corruption (hereinafter referred to as Law No. 20 of 2001).

In addition to the provisions above, the Government has also established various laws and regulations related to corruption crime. In this case, regulate various punishments to provide a deterrent effect to corruptors and other perpetrators involved in this extraordinary crime. Therefore, it can be understood that the Government is serious about eradicating corruption crime. However, along the way, the Government realized that the existence of the Corruption Eradication Commission (CEC) was still not optimal without the involvement of all community elements. Therefore, Government Regulation of the Republic of Indonesia Number 43 of 2018 on Procedures for Implementing Community Participation and Awarding in Deterring and Eradicating the Criminal Act of Corruption (hereinafter referred to as Government Regulation No. 43 of 2018) was established.

Community participation, as regulated in Government Regulation No. 43 of 2018, includes seeking, obtaining, and providing information regarding alleged corruption crimes in government and private institutions. Therefore, all community elements need to know the category of corruption crime. Corruption crime referred to in Law No. 20 of 2001, including:⁴

1. Losses to the State finance;
2. Bribery;
3. Embezzlement in position;
4. Extortion;
5. Manipulation;
6. Conflict of interest in procurement;
7. Gratification.

³Hardjaloka, L. (2014). Studi Penerapan E-Government di Indonesia dan Negara Lainnya sebagai Solusi Pemberantasan Korupsi di Sektor Publik. *Jurnal Rechts Vinding: Media Pembinaan Hukum Nasional*, 3(3), pp. 444-445.

⁴Bunga, M., et al. (2019). Urgensi Peran serta Masyarakat dalam Upaya Pencegahan dan Pemberantasan Tindak Pidana Korupsi. *Law Reform*, 15(1), p. 87.

Some of the corruption crimes above are easy to find in everyday life. For example, giving a teacher a tribute, so our child always gets more attention.⁵ Giving additional money to an administrative officer in a government agency to speed up the processing of files or documents needed.⁶ Paying peace money to the Police when the driver cannot show the completeness of the motor vehicle documents when the Police conduct a raid.⁷ Giving tribute to superiors or receiving tribute from subordinates.⁸ Undeniably, this event has increased the cost of living for someone who provides additional costs for the effect he expects.⁹ In contrast, the increase in income for officers who provide more services so that they receive additional costs from that the community.¹⁰

From the findings above, it can be understood that this action can be assessed as a form of gratification or bribery. Eddy O. S. Hiarij considers that gratification and bribery are forms of corruption crime that are identical but not the same.¹¹ There is a principle difference between gratification and bribery. Gratification crime is giving without a meeting of minds between the giver and the recipient of the tribute. In contrast, bribery crime is giving with a meeting of minds between the giver and the recipient of the tribute. Article 12 B section (1) of Law No. 20 of 2001 regulates that:

“Every gratification to a civil servant or state administrator is considered bribery if it is related to their position and contrary to their obligations or duties ...”

As for the explanation of the provision above, that:

“What is meant by “gratification” in this section is a gift in a broad sense, which includes the provision of money, goods, rebates (discounts), commissions, interest-free loans, travel tickets, lodging facilities, tourist trips, free medical treatment, and other facilities. The gratuities are received both domestically and abroad and carried out using or without electronic means.”

In contrast, Article 12 C section (1) of Law No. 20 of 2001 regulates that:

“The provisions referred to in Article 12 B section (1) do not apply if the recipient reports their gratification to the Corruption Eradication Commission.”

⁵Nazifah, L. (2019). Strategi Menyikapi Gratifikasi dengan Identifikasi Pemberian Hadiah Kepada Pegawai Negeri Sipil. *Monas: Jurnal Inovasi Aparatur*, 1(2), p. 54.

⁶Yunas, N. S. (2020). Implementasi e-Government dalam Meminimalisasi Praktik Rent Seeking Behaviour pada Birokrasi Pemerintah Kota Surabaya. *Matra Pembaruan: Jurnal Inovasi Kebijakan*, 4(1), p. 18.

⁷Silaban, R. & Pase, I. M. (2021). Tinjauan Yuridis Sanksi Pidana terhadap Pelaku Pelanggaran Lalu Lintas Menurut Undang-Undang Nomor 22 Tahun 2009 tentang Lalu Lintas dan Angkutan Jalan. *Jurnal Rectum: Tinjauan Yuridis Penanganan Tindak Pidana*, 3(1), p. 109.

⁸Mapuasari, S. A. & Mahmudah, H. (2018). Korupsi Berjamaah: Konsensus Sosial atas Gratifikasi dan Suap. *Integritas: Jurnal Antikorupsi*, 4(2), p. 167.

⁹Setiyowati, L. & Ispriyoso, B. (2019). Upaya Preventif dalam Rangka Pengawasan terhadap APBD Melalui Penjaringan Aspirasi Masyarakat oleh DPRD. *Jurnal Pembangunan Hukum Indonesia*, 1(2), pp. 259-260.

¹⁰Istiqomah, M. (2016). Kebijakan Formulasi Pengaturan “Illicit Enrichment” sebagai Upaya Pemberantasan Tindak Pidana Korupsi. *Jurnal Media Hukum*, 23(1), p. 81.

¹¹Vide Administrator. (2021, 5 October). Gratifikasi dan Suap, Apa sih Bedanya? *Ministry of Law and Human Rights of the Republic of Indonesia*. Retrieved at the date of 22 December 2021.

Based on the description above, this study examines the principles that can deter and eradicate gratification as part of the corruption crime.

METHOD

This study uses a normative juridical research method to analyze legal problems by referring to and originating from legal norms.¹² The types of data used are legal materials, including:

1. Primary legal materials include Law No. 28 of 1999, Law No. 39 of 1999, Law No. 20 of 2001, Law No. 5 of 2014, Law No. 19 of 2019, Government Regulation No. 43 of 2018, and other laws and regulations;
2. Secondary legal materials that explain primary legal include books, articles, and online materials that discuss gratification and corruption crime; and
3. Tertiary legal materials are legal materials that provide instructions and explanations for primary and secondary legal materials. The tertiary legal material used by the author is the Big Indonesian Dictionary and related legal dictionaries.

The data was collected using literature study techniques on primary, secondary, and tertiary legal materials. The collected legal material is then analyzed using qualitative data analysis methods will then conclude the object of the research.¹³

RESULTS AND DISCUSSION

As described by Eddy O. S. Hiariej above, gratification and bribery are forms of corruption crime that are identical but not the same. In addition, there is a difference between extortion, bribery, and gratification as forms of corruption crime. Extortion crime is a condition where the community or businessman pays tribute due to a direct request from a civil servant or state administrator. In this case, the civil servant or state administrator is in a position to play an active role related to the tribute's presence. Bribery crime is a condition where the community or businessman pays tribute after a transaction and agreement with a civil servant or state administrator. In this case, the civil servant or state administrator acts as negotiators related to the tribute's presence. Gratification crime is when the community or businessman pays tribute after receiving benefits from the civil servant or state administrator position, contrary to his duties. In this case, the civil servant or state administrator is in a position to play a passive role related to the tribute's presence.

¹²Diantha, I. M. P. (2017). *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*. Jakarta: Kencana Prenada Media Group, p. 12.

¹³Qamar, N. & Rezah, F. S. (2020). *Metode Penelitian Hukum: Doktrinal dan Non-Doktrinal*. Makassar: CV. Social Politic Genius (SIGn), pp. 47-48.

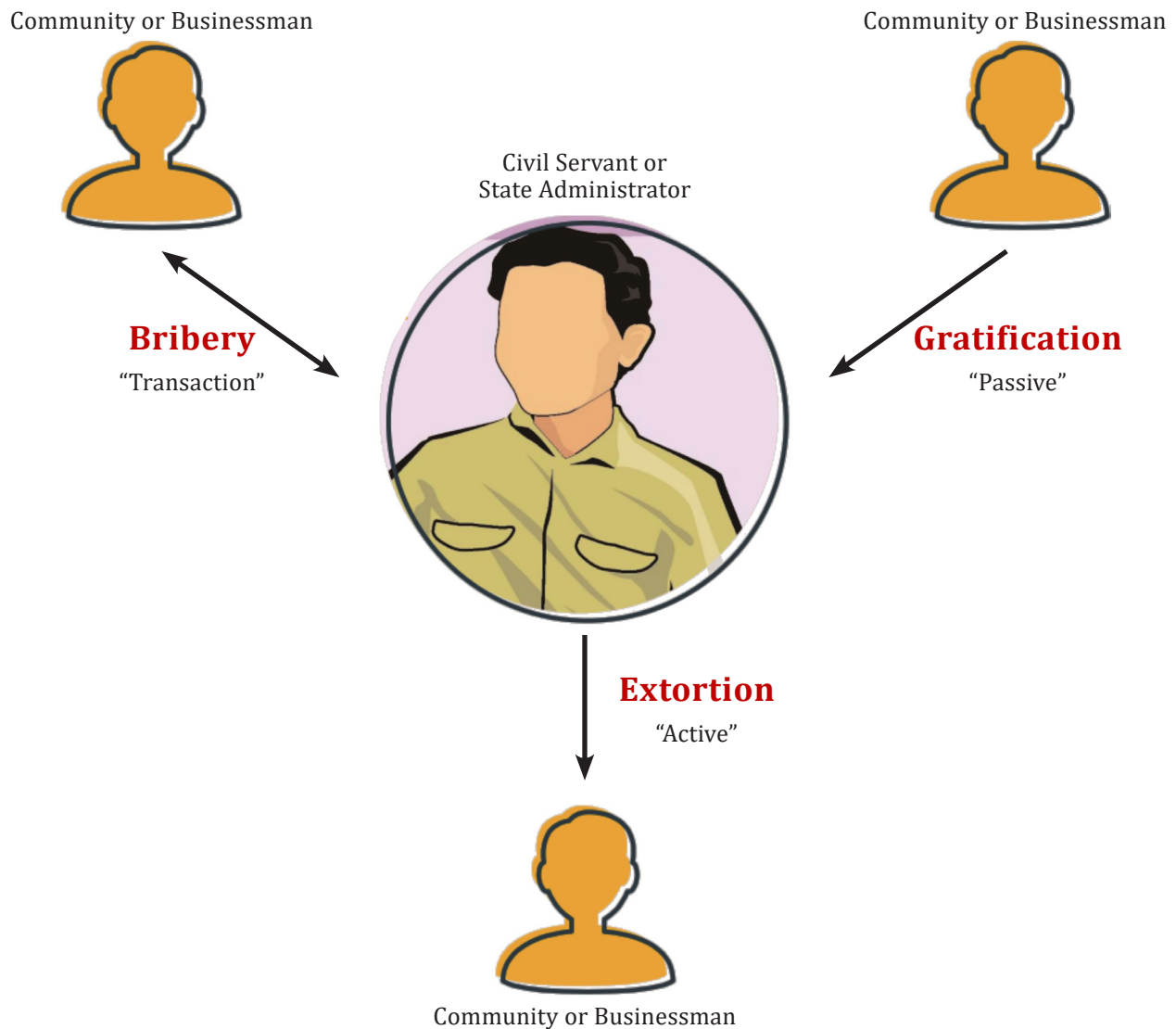


Figure 1. Position of the Civil Servant or State Administrator in Extortion, Bribery, and Gratification

From the description above, it can be understood that gratification crime can be deterrence and eradicated by civil servants or state administrators by refusing tribute from the community or businessman. If civil servant or state administrator actors have received tribute but have indications of gratification, they must report this crime as regulated in Article 12 C section (1) of Law No. 20 of 2001. Furthermore, based on Article 12 C section (2) of Law No. 20 of 2001 regulates that:

“The report, as referred to in section (1), must be submitted by the recipient of the gratification no later than 30 (thirty) working days from the date that gratification is received.”

If the civil servant or state administrator does not report the incident of giving the tribute, then the condition must be assessed as an incident of bribery crime.¹⁴ Meanwhile,

¹⁴Harefa, N. S. K., et al. (2020). Dasar Pertimbangan Hakim terhadap Tindak Pidana Korupsi yang Dilakukan oleh Pegawai Negeri Sipil (PNS): Studi Kasus Putusan Pengadilan Negeri Medan Nomor: 73/Pid. Sus-TPK/2018/PN.Mdn. *SIGn Jurnal Hukum*, 2(1), p. 33.

the position of the community or businessman as the giver of tribute related to gratification crime, based on Article 5 section (2) point b of Law No. 20 of 2001, regulates that:

“Punished with imprisonment for a minimum of 1 (one) year and a maximum of 5 (five) years and or a fine of a minimum of IDR 50,000,000.00 (fifty million rupiah) and a maximum of IDR 250,000,000.00 (two hundred and fifty million rupiah) any person who gives something to a civil servant or state administrator because of or in connection with something contrary to their obligations, done or not done in their position.”

So that the provisions related to gratification crime can be understood as a balance between two sides: the provision of severe punishment and the elimination of punishment demands. In other words, the provision accommodates the deterrence and eradication aspects simultaneously. Therefore, deterrence and eradication of gratification crime must be implemented based on the principles of eradication of the criminal act of corruption. Article 5 of Law No. 19 of 2019 regulates that in carrying out its duties and authorities, the Corruption Eradication Commission is principled on:

- a. legal certainty;
- b. transparency;
- c. accountability;
- d. public interest;
- e. proportionality; and
- f. respect for human rights.

A. Legal Certainty

Article 5 point a in Annex of Law No. 19 of 2019 explains that:

“In this provision, legal certainty is the principle in a law-based state that prioritizes the basis of laws and regulations, propriety, and justice in every policy to carry out the duties and authorities of the Corruption Eradication Commission.”

From the explanation above, it can be understood that the deterrence and eradication of gratification crime must have explicit legal enforcement provisions. In this case, as regulated in Article 12 B and Article 12 C of Law No. 20 of 2001. In addition, the encumbrance system of reverse proof was introduced during the formulation of Article 12 B and Article 12 C of Law No. 20 of 2001. Encumbrance of reverse proof aims to simplify the process of proving illegal receipts and indications as a bribery crime for civil servants or state administrators. As for the elements of a gratification crime offense include:

1. Civil servants or state administrators;
2. Receiving tribute;
3. Concerning their position and contrary to their obligations or duties;
4. Not reporting receipt of tribute to CEC within 30 working days from the date that tribute is received.

Therefore, with Article 12 B and Article 12 C of Law No. 20 of 2001, the civil servant or state administrator has obtained legal certainty to be free from indications of bribery crime. On the other hand, Article 12 C of Law No. 20 of 2001, as the basis for eliminating prosecution for gratification offenses, can increase the awareness of civil servants or state administrators to report incidents of gratification crime.

B. Transparency

Article 5 point b in Annex of Law No. 19 of 2019 explains that:

“In this provision, transparency is the principle that self-discloses the public’s right to obtain correct, honest, and non-discriminatory information about the performance of the Corruption Eradication Commission in carrying out its duties and functions.”

From the explanation above, transparency can also be understood as the willingness of the CEC to share information, opinions, and knowledge with the public. In addition, the CEC must be in a state of no pressure. The principle of transparency is reflected in Government Regulation No. 43 of 2018. In this case, the community can participate in seeking, obtaining, and providing information regarding indications of gratification crime. Article 2 section (1) of Government Regulation No. 43 of 2018 regulates that *“the community can participate in helping deter and eradicate criminal acts of corruption.”* On the other hand, community participation is a means to test and guarantee the validity of a person’s or businessman’s good deeds when giving something to a civil servant or state administrator.

In contrast, this principle is not necessarily attached to every element in the process of handling gratification crimes. The principle of transparency can be overridden by looking at a more substantial interest. In this case, CEC does not announce the identity of the reporter in order to provide protection or prevent the reporter from threats from parties related to gratification crime.

C. Accountability

Article 5 point c in Annex of Law No. 19 of 2019 explains that:

“In this provision, accountability is the principle that determines that every activity and the final result of the activities of the Corruption Eradication Commission must be accountable to the public or citizens as the holder of the supreme sovereignty of the state in accordance with applicable laws and regulations.”

From the explanation above, it can be understood that accountability must be effective based on Article 3 of Law No. 19 of 2019, which regulates that:

“The Corruption Eradication Commission is a state institution within the executive power clump that, in carrying out its duties and authorities, is independent and free will from the influence of any power.”

Article 18 of Law No. 19 of 2019 regulates that:

“The Corruption Eradication Commission is required to announce gratifications determined to be state property at least 1 (one) time a year in the State Bulletin.”

From the above provisions, accountability also refers to the CEC's responsibility to present reporting on community participation related to gratification crimes. Through the CEC's performance accountability reports that the public can access, the CEC also shows that it is an institution with the principle of transparency. CEC tries to present its performance with accuracy and completeness, and the presentation format is attractive verbally and visually. In this case, CEC provides quality information that can have an impact on increasing community trust in CEC.

D. Public Interest

Article 5 point d in Annex of Law No. 19 of 2019 explains that:

“In this provision, the public interest is the principle that prioritizes the general welfare in an aspirational, accommodating, and selective way.”

From the explanation above, it can be understood that public interest is the embodiment of the holder of the supreme sovereignty of the state. So that all regulations and decisions of state administrators are directed to the maximum benefit of the citizens. The public interest also emphasizes state administrators' attitude to prioritize the community's interests over personal ones. In the context of deterrence and eradication of gratification crime, the principle of public interest is manifested by the integrity of civil servants or state administrators to refuse tribute to the interests of specific communities or businessmen. In addition, CEC as state administrators is also inseparable from giving tribute related to gratification crime. Therefore, the attitude of civil servants or state administrators, as well as the CEC, to put aside personal interests and remain consistent in deterring and eradicating gratification crime is the embodiment of the principle of public interest.

E. Proportionality

Article 5 point e in Annex of Law No. 19 of 2019 explains that:

“In this provision, proportionality is the principle that prioritizes the balance between the duties, authorities, responsibilities, and obligations of the Corruption Eradication Commission.”

From the explanation above, it can be understood that proportionality is regulated in Chapter II of Law No. 19 of 2019, including duties, authorities, and obligations of the CEC. In addition, civil servants or state administrators are also one of the elements in Article 12 B section (1) of Law No. 20 of 2001. Proportionality

of the civil servants is regulated in Chapter IV of Law of the Republic of Indonesia Number 5 of 2014 on the State Civil Apparatus, including functions, duties, and roles. Meanwhile, the proportionality of the state administrators is regulated in Chapter IV of Law of the Republic of Indonesia Number 28 of 1999 on the State Organizer who shall be Clean and Free from Corruption, Collusion, and Nepotism (hereinafter referred to as Law No. 28 of 1999), including the rights and obligations of the state administrators. Article 2 of Law No. 28 of 1999 regulates that the state administrators include:

1. State Officials in the Highest State Institutions;
2. State Officials in the High State Institution;
3. Minister;
4. Governor;
5. Judge;
6. Other state officials in accordance with the provisions of the applicable laws and regulations; and
7. Other officials who have strategic functions in relation to state administration in accordance with the provisions of the applicable laws and regulations.

Furthermore, the proportionality of community participation is regulated in Chapter II of Government Regulation No. 43 of 2018, including procedures for implementing community participation.

F. Respect for Human Rights

Consideration point c of Law No. 19 of 2019, considering that:

“The implementation of the duties of the Corruption Eradication Commission needs to be continuously improved through a comprehensive and synergistic deterrence and eradication of the criminal act of corruption strategy without neglecting respect for human rights in accordance with applicable laws and regulations.”

From the consideration above, it can be understood that respect for human rights is in line with Article 1 point 1 of Law of the Republic of Indonesia Number 39 of 1999 on Human Rights, which explains that:

“Human rights are a set of rights that are inherent in the essence and existence of humans as creatures of God Almighty and are a gift from God that must be respected, upheld and protected by the state, the law, the government and everyone for the sake of honor and protection of human dignity.”

One form of respect for human rights is legal certainty for civil servants or state administrators as regulated in Article 12 C of Law No. 20 of 2001. In addition, the CEC must stop the investigation process and publicly announce that civil servants or state administrators are proven not to be involved in gratification crimes. The termination and announcement made by CEC is a form of respect

for human rights. Therefore, respecting human rights will open up space for all elements of society to deter and eradicate gratification crime.¹⁵

CONCLUSIONS AND SUGGESTIONS

Based on the results and discussion above, it can be concluded that the deterrence and eradication of gratification crime have been regulated in Article 12 B and Article 12 C of Law No. 20 of 2001. In addition, this provision contains an encumbrance of reverse proof, which aims to simplify the process of proving illegal receipts and indications as a bribery crime for civil servants or state administrators. As for the principles in deterrence and eradication of gratification crime include legal certainty, transparency, accountability, public interest, proportionality, and respect for human rights. Based on the description of these conclusions, it is recommended to CEC, civil servants or state administrators, and the community to practice the principles of deterrence and eradication of gratification crime. In this case, Indonesia can be released from the shackles of criminal acts of corruption in the future.

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¹⁵Fitrah, F. A., *et al.* (2021). The Position of Civil Servant Investigator of Directorate General of Tax (DGT) in the Frame of Taxation Criminal Law Enforcement in Indonesia. *SIGn Jurnal Hukum*, 3(1), p. 12.

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