

Authority of State Attorney in Marriage Announcement

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Abstract. *As a functional official, the State Attorney General is granted authority not limited to criminal matters but also to annul marriages if they do not have a permit as specified in the Marriage Law. The purpose of this study is to determine and analyze the authority of the State Attorney General in annulment of marriages. This study aims to determine and analyze the optimization of the State Attorney General's authority in annulment of marriages. This thesis is a sociological juridical type, using the Law and Case approach method, conceptual, the research specifications are descriptive analysis, data sources consist of primary and secondary data taken from primary legal materials, secondary legal materials, tertiary legal materials, data collection methods through literature studies and analysis techniques using qualitative. The research results show that the authority of the State Attorney in annulling a marriage is based on Law Number 1 of 1974 concerning Marriage, KHI. The annulment of the marriage in question can be carried out by the Prosecutor based on Article 26 of Law Number 1 of 1974 concerning Marriage, and KHI Article 73 letter (c) that the Official authorized to annul a marriage is the Prosecutor. The Prosecutor's actions in annulling a marriage are in accordance with the theory of authority where there is attributive authority granted to the Prosecutor based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. Optimizing the authority of the State Attorney in annulling a marriage is firstly by improving special regulations, because currently operational regulations regarding the technical mechanisms of the State Attorney in filing an annulment have not been specifically regulated. Harmonization of regulations is needed so that execution in court is more focused. Second, by taking preventive measures, because optimization is not only in the form of litigation (court proceedings), but also preventive efforts through socialization and public education regarding the importance of registering marriages according to procedure. Third, collaboration between relevant agencies, where State Attorneys can enforce civil law by working with the Ministry of Religious Affairs and Religious/State Courts to minimize the*

occurrence of invalid marriages or underhanded marriages that are detrimental to one of the parties.

Keywords: Authority; Annulment of Marriage; State Attorney.

1. Introduction

Humans are creatures created by Allah SWT for the purpose of worship and devotion to Him. One form of this worship is marriage. Article 28B of the 1945 Constitution of the Republic of Indonesia states that every person has the right to form a family with the aim of having children through a legal marriage. Marriage is carried out to continue the human lineage to continue life. The meaning and purpose of marriage, namely everything related to marriage, is regulated in detail and comprehensively by Islamic and state law. Marriage is carried out in accordance with all the pillars and conditions and is valid according to religious and state law if it does not violate marriage prohibitions. Marriage is a very important event in human life, both as individuals and as a group.¹

The implementation of marriage must comply with the legal requirements in Law Number 1 of 1974 concerning Marriage, as amended by Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage. Article 1 of Law Number 1 of 1974 concerning Marriage provides the definition that

" Marriage is a physical and spiritual bond between a man and a woman as husband and wife with the aim of forming a happy and eternal family (household) based on the Almighty Godhead."

In the provisions of Article 7 paragraph (1) of Law Number 16 of 2019 concerning Amendments to Law Number 1 of 1974 concerning Marriage, it is explained that marriage is only permitted if the man and woman have reached the age of 19 (nineteen) years. Meanwhile, in the provisions of Article 8 of Law Number 1 of 1974 concerning Marriage, it is explained that marriage is prohibited, including:

- a. related by blood in a straight downward or upward lineage;
- b. blood relations in the lateral line of descent, namely between siblings, between a person and their parents' siblings and between a person and their grandparents' siblings;
- c. related by marriage, namely in-laws, stepchildren/daughters-in-law and stepmother/father;

¹Harpani Matnuh, Unlawful Marriage and Its Legal Consequences According to National Marriage Law, Journal of Civic Education, Volume 6, Number 11, May 2016, p. 899.

- d. related to foster care, namely foster parents, foster children, foster siblings and foster aunts/uncles;
- e. related to the wife or as an aunt or niece of the wife, in the case of a husband having more than one wife;
- f. having a relationship that is prohibited by their religion or other applicable regulations from marriage.

If during the marriage process there are irregularities and abuses in the marriage, the marriage can be annulled or fasakh.² A marriage fasakh application can be submitted if there are inappropriate and incomplete requirements, or even indications of deception or fraud.

Provisions regarding the annulment of a marriage are regulated in Article 22 of Law Number 1 of 1974 concerning Marriage, which explains that:

" A marriage can be annulled if the parties do not fulfill the conditions required to enter into a marriage."

In full, Article 23 of Law Number 1 of 1974 concerning Marriage states that the parties who can file for annulment of marriage are:

- a. The families in a straight line up from the husband or wife;
- b. Husband or wife;
- c. The official is only authorized as long as the marriage has not been decided;
- d. The appointed official referred to in paragraph (2) of Article 16 of this Law and any person who has a direct legal interest in the marriage, but only after the marriage has ended.

That Article 26 paragraph (1) of Law Number 1 of 1974 concerning Marriage also states:

(1) A marriage that is conducted in the presence of an unauthorized marriage registrar, an invalid marriage guardian or one that is conducted without the presence of 2 (two) witnesses can be requested to be annulled by the families in the direct line of descent from the husband or wife, the Prosecutor and the husband or wife.

(2) The right to annul by a husband or wife based on the reasons in paragraph (1) of this article is void if they have been living together as husband and wife and can show a marriage certificate made by an unauthorized marriage registrar and the marriage must be renewed to be valid.

²Subekti, Principles of Civil Law, Jakarta Intermasa, 1982, p. 23

Based on Article 26 paragraph (1) of Law Number 1 of 1974 concerning Marriage, it is stipulated that the Prosecutor has the authority to file for the annulment of a marriage. The Prosecutor's Office is a government apparatus tasked with enforcing the law.

Based on Article 1 number 1 of Law No. 11 of 2021 concerning Amendments to Law No. 16 of 2004 concerning the Attorney General's Office of the Republic of Indonesia, the Attorney General's Office of the Republic of Indonesia, hereinafter referred to as the Prosecutor's Office, is a government institution whose functions are related to other judicial powers based on law. Based on Article 30 of Law No. 11 of 2021 concerning the Attorney General's Office of the Republic of Indonesia, the Attorney General's Office has jurisdiction in the criminal, civil, and state administrative fields, as well as in the field of public order and security. A Prosecutor not only carries out the main task as a public prosecutor, but is also burdened with other duties including in civil cases as a State Attorney in his position as the government's legal representative.

An example of a marriage annulment lawsuit filed by the State Attorney at the West Jakarta Religious Court. The lawsuit was filed by the West Jakarta State Attorney (JPN) acting under the authority of the Head of the West Jakarta District Attorney's Office. In the case, which was registered with the West Jakarta PA on April 30, 2025, the Head of the West Jakarta District Attorney's Office, Hendri Antoro, was the plaintiff, while HS and AFS were the defendants. The annulment of the marriage was intended to allow Indonesia to repatriate Alifah Putri, a victim of domestic violence who is currently detained in Saudi Arabia. The reason is that Saudi Arabian law does not allow a woman to be repatriated to her country if she is still tied to a Saudi man.

Based on the Decision of the West Jakarta Religious Court Number: 1175/Pdt.G/2025/PA.J, the Panel of Judges of the West Jakarta Religious Court annulled the marriage or marriage between Defendant 1 and Defendant 2 as stated in the marriage certificate number 3173011082024040 dated August 7, 2024 issued by the Religious Affairs Office of Cengkareng District, West Jakarta City. And ordered the Religious Affairs Office of Cengkareng District, West Jakarta City to cross out the marriage certificate number 3173011082024040 dated August 7, 2024.³

Law Number 1 of 1974 stipulates that marriages must be conducted in accordance with the laws of each respective religion. A marriage can be annulled if it fails to meet the requirements for a valid marriage, such as the absence of a guardian, the absence of two witnesses, or the conduct of an unauthorized party.

³<https://megapolitan.kompas.com/read/2025/09/11/18194171/pengadilan-agama-jakbar-batalan- pernikahan-wni-korban-kdrt-di-arab-saudi> , accessed on January 30, 2026

An annulment can be filed by the family, the husband/wife, or the prosecutor, and is filed in court in accordance with applicable procedural law.

Based on the problems above, the author wishes to conduct research in the form of a thesis with the title "The Authority of the State Attorney in the Annulment of Marriages".

2. Research Methods

The type of research used in this thesis is empirical juridical legal research. According to Soetandyo Wignjosoebroto, empirical legal research is research that involves empirical studies to discover theories regarding the workings of law in society.⁴

The type of research used in this thesis is descriptive. Descriptive legal research is explanatory in nature, aiming to obtain a complete picture (description) of a specific situation at a specific time, or of existing legal phenomena, or of specific legal research occurring in society.⁵

3. Results and Discussion

3.1. The Authority of the State Attorney in the Annulment of Marriage

1. Regulation of the Prosecutor's Authority in Marriage Annulment

A marriage can be annulled when it violates the laws governing marriage or marriage law. The Marriage Law, regarding the annulment of marriage is regulated in Articles 22 to 27. Government Regulation No. 9 of 1975 concerning the annulment of marriage in Articles 37 and 38 and the Compilation of Islamic Law in Articles 70 to 76.

Several of the articles above explain that a marriage can be annulled when:⁶

- a. The parties did not fulfill the various requirements for carrying out the marriage.
- b. The existence of a marriage while the parties are still bound by a valid marriage or are still husband or wife, or are still within the other husband's iddah period.
- c. The marriage took place in front of an invalid or unauthorized Marriage Registrar.

⁴Soetandyo Wignjosoebroto, *Law, Paradigm, Method and the Dynamics of the Problem*, Huma, Jakarta, 2002, p. 147.

⁵Ibid, p. 63.

⁶Deni Rahmatillah & AN Khofify, *The Concept of Marriage Annulment in Law Number 1 of 1947 and the Compilation of Islamic Law*, *Journal of Islamic Law*, 17(2), 2017, p.159.

- d. Marriage with an unauthorized or illegitimate guardian.
- e. Marriage with witnesses present not by two people.
- f. A marriage entered into under threat of unlawful force or coercion.
- g. A marriage that is entered into because there is a misunderstanding about the wife or husband.
- h. Marriage that violates the age limit, or the man has not reached nineteen years of age and/or the woman has not reached sixteen years of age.

Regarding whether an individual or institution has the right to file for annulment of marriage, it is necessary to first understand the regulations governing this matter. The inability to act as the applicant will determine whether a petition or lawsuit will be accepted or rejected. If an individual is entitled to file a petition, the hearing will proceed to the merits of the case; however, if the individual is not entitled, the case will be rejected.⁷

The existence of the prosecutor's office in the civil sector is still recognized and regulated in the prosecutor's law, as regulated in the provisions of Staatsblad 1922 No. 522 and Article 123 paragraph 2 HIR which states that the Attorney/Representative of the State/Government in a civil case is the State Attorney/Prosecutor, therefore the Prosecutor's Office refers to Article 18 paragraph (2) of the Republic of Indonesia Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Republic of Indonesia Prosecutor's Office which reads

" The Attorney General with Special Powers or because of his position and title acts as a State Attorney, in the field of Civil and State Administration and State Law in all judicial environments, both inside and outside the court for and on behalf of the State or Government, as well as in the public interest."

In the case of public interest, the Prosecutor's Office acting as the State Attorney can file a lawsuit for annulment of marriage.

Annulment of marriage means that a marriage that has already taken place can be annulled if the parties fail to fulfill the requirements for and conduct the marriage. An annulled marriage can only be decided by a court. Annulment of marriage can also be defined as a marriage that can be annulled if the marriage is performed by the parties, either the husband or wife, or one of the parties,

⁷Mukmin Mukri, Prevention and Annulment of Marriage, Perspective Journal, 13(2), 2020, p.104.

namely the husband or wife, is proven not to have fulfilled the requirements for the marriage to take place.⁸

In legal science, it can be found that there are marriages that are null and void, as in the following definition, that in the annulment of a marriage there must always be a court decision stating that the marriage is deemed to not exist or is null and void.⁹

Procedures for Marriage Annulment based on Article 38 paragraph (2) of Government Regulation Number 9 of 1975 concerning the Implementation of Law Number 1 of 1974 concerning Marriage states that "The procedures for submitting an application for marriage annulment are carried out in accordance with the procedures for submitting a divorce suit." Thus, the procedures used for an application for marriage annulment are the same as the procedures for submitting a divorce application. Furthermore, in paragraph (3) of the article it is stated that "Matters related to summons, examination of marriage annulment and court decisions are carried out in accordance with the procedures in Articles 20 to 36 of this PP."

If a marriage fails to meet the requirements of the Marriage Law, it can be annulled. This is because marriage is a legal act, and annulment carries legal consequences.¹⁰

The annulment of a marriage begins after the court's decision has permanent legal force and is effective from the time the marriage takes place. Annulment of a marriage has legal consequences for all parties, including both the parties who entered into the marriage and any other parties involved in the marriage.¹¹

A court itself is an organization or body established by the state to adjudicate or resolve legal disputes. Courts process disputes through several stages until a decision is reached. A decision is a concrete form of justice related to a specific dispute and to a specific legal entity that has suffered a loss related to their rights. A court decision restores an unjust situation, resulting from a legal violation, to its original state.¹²

⁸Tami Rusli, Annulment of Marriage Based on Law Number 1 of 1974 Concerning Marriage, *Jurnal Pranata Hukum*, 8(2), 2019, p.163.

⁹Khoirul Anam, Annulment of Marriage Due to Falsification of Husband's Identity in Polygamy, *Sikes Journal*, 1(1), 2019, p. 5

¹⁰Hanafi Arief, Agreements in Marriage (A Study of Positive Law in Indonesia), *Al'Adl Journal*, 9(2), 2017, p.154.

¹¹Ahmad Supandi Patampari, Legal Consequences of Marriage Annulment According to Islamic Law, *Al Syakhshiyah: Journal of Islamic Family Law and Humanity*, 2(2), 2020, p. 89.

¹²Rio Christiawan, Court Decision as a Form of Legal Effort in the Execution Process, *Judicial Journal*, 11(3), 2018, p.370.

The Prosecutor's knowledge of legal violations regarding the implementation of marriage is found both directly and indirectly. The Prosecutor's direct knowledge means that the Prosecutor himself will later find out that there are violations regarding the marriage that has been carried out by the parties, while information from parties directly involved or parties who know about the marriage, this is the Prosecutor's knowledge which is categorized as indirect knowledge. That the explanation given by the community to the Prosecutor needs to be supported by sufficient evidence, that the implementation of the marriage has clearly violated positive Indonesian law, this is as stated in the Marriage Law along with its derivative regulations. That the case of marriage annulment is included in the scope of civil law, for that the Prosecutor in the application for annulment of marriage acts as the applicant, and on the other hand the husband and wife whose marriage annulment is requested, in this case plays the role of the respondent.¹³

Based on the General Explanation in number 4 letter b of the Marriage Law, it states that this Law states that a marriage is valid if it is carried out according to the laws of each religion and its beliefs. Furthermore, each marriage must be registered according to applicable laws and regulations. Registration of each marriage is the same as recording important events in a person's life, for example, death, birth, which are stated in certificates, or a certificate that is also included in the registration list.¹⁴ The presentation clearly explains that the validity of a marriage is determined by the laws of each individual's religion and beliefs. Marriage registration does not determine whether a marriage is valid or not, but rather is an administrative requirement mandated by law.¹⁵

The Marriage Law does not regulate the definition of annulment of marriage, and likewise Government Regulation Number 9 of 1975 which is the implementing agency of the Marriage Law, so there is not a single regulation that regulates the definition of annulment of marriage.¹⁶

The reason for annulment of marriage is by the husband and wife or by the families in the direct line of descent from the husband or wife, or also by the prosecutor based on Article 26 paragraph (2) of the Marriage Law becomes void when they have lived together as husband and wife and can show a marriage certificate made by an unauthorized marriage registrar and the marriage must be renewed to be valid. Meanwhile, other reasons for submitting an annulment of

¹³Andi Iswandi, Review of Marriage Annulment Caused by Fraud in Religious Courts, *Journal of Islamic Law and Studies "QONUNI"*, 1(2), 2021, pp. 76-88.

¹⁴Imam Faishol, Marriage Registration in Family Law in Indonesia, *Jurnal Uloomul Syar'i*, 8(2), 2019, pp. 1-25

¹⁵Dwi Arini Zubaidah, Marriage Registration as Legal Protection from the Perspective of Maqasid Asy Syariah, *Jurnal Al-Aḥwāl*, 12(1), 2019, pp. 15-28.

¹⁶Tami Rusli, Annulment of Marriage Based on Law Number 1 of 1974 Concerning Marriage, *Jurnal Pranata Hukum*, 8(2), 2019, pp. 157-167.

marriage can be submitted by the husband or wife for the annulment of their marriage if the marriage took place under unlawful threats, or when the marriage took place it was proven that there was a mistake about the person, such as a mistake about the husband or wife who was married, because the one who should have been married was not the husband or wife. The meaning of "self" is the "outer body", not the "inner body" or the presence of certain diseases.¹⁷

Based on Article 38 paragraph (2) of Government Regulation Number 9 of 1975 concerning the Implementation of the Marriage Law, it states that "The procedures for submitting an application for annulment of marriage are carried out in accordance with the procedures for submitting a divorce suit."

3.2. Optimizing the Authority of State Attorneys and Prosecutors in Marriage Annulments

1. Analysis of Legal System Theory in the Effectiveness of the Authority of State Attorneys in Marriage Annulment

Lawrence Meir Friedman, a leading legal expert and sociologist, argued that law enforcement in a country is influenced by various interacting factors. In his view, law enforcement is not simply a matter of implementing written regulations, but also encompasses social, cultural, and behavioral factors within the legal system itself. Friedman believes that there are three main elements influencing law enforcement: legal structure, legal substance, and legal culture.¹⁸

The first factor Friedman explains is the legal structure. Legal structure refers to the organization and systems within law enforcement agencies such as the police, prosecutors, courts, and correctional institutions. Friedman emphasizes that the effectiveness of law enforcement depends heavily on how well these structures function in organizing and coordinating law enforcement actions.¹⁹

The legal structure hindering State Attorneys' (Public Attorneys) in annulment of marriages is the problem of limited human resources (HR), where most prosecutors prioritize their duties as public prosecutors in criminal cases due to the high number of criminal cases and the rapidly changing dynamics of national policies in the civil sector. This condition creates an imbalance between the need for legal services and the availability of competent human resources, so that the effectiveness of work results is not optimal. Furthermore, interest in specializing as State Attorneys (Public Attorneys) in the fields of civil and state administration

¹⁷Rusdaya Basri, The Concept of Marriage in the Thought of Fuqaha, *Jurnal Hukum Diktum*, 13(2), 2019, p.110.

¹⁸Al Kautsar, I., & Muhammad, DW Lawrence M. Friedman's Modern Legal System: Legal Culture and Social Change from Industrial to Digital Society. *Sapientia et Virtus*, 7(2), 2022, pp. 84–99

¹⁹Ibid

is still low, given that these fields are considered more dynamic than the relatively stable criminal law. This situation presents a challenge for the Prosecutor's Office in its efforts to improve the quality and effectiveness of civil legal services comprehensively. Various steps have been taken to improve the effectiveness of the State Attorneys' (Public Attorneys) role, one of which is through legal counseling programs and strengthening public legal awareness.

The second factor mentioned by Friedman is legal substance. By substance, we mean the actual rules, norms, and patterns of human behavior within the system. Thus, legal substance relates to applicable laws and regulations that are binding and serve as guidelines for law enforcement officers in carrying out their duties.²⁰.

The substantive legal obstacle facing State Attorneys (Public Prosecutors) in annulling marriages is that the Marriage Law grants prosecutors the authority to file for annulment. However, there are multiple interpretations regarding the scope of this limitation, particularly in cases of violations of marriage requirements, which are still considered a purely private matter. This makes it difficult for the PPN to determine whether a violation has caused a disturbance of public order requiring state intervention.

The third factor mentioned by Friedman is legal culture. Legal culture encompasses the values and beliefs held by a society regarding the law. In Friedman's view, a positive legal culture in which the public respects the law and understands the importance of justice will support better law enforcement. Conversely, a negative legal culture, such as distrust of the legal system or even indifference to legal violations, can weaken the effectiveness of law enforcement. For example, if the public does not feel represented or treated fairly by law enforcement officials, they may be reluctant to report or follow legal procedures. Therefore, a positive legal culture, which fosters legal awareness and active public participation, is a key element in creating an effective and just legal system.²¹

Cultural legal barriers hinder State Attorneys (Public Attorneys) in handling marriage annulments, as society considers marriage annulments a private matter. Handling marriage annulments conflicts with socio-cultural values that consider marriage matters a private family matter. This makes it difficult for State Attorneys (Public Attorneys) to access data or file complaints, except from the aggrieved party.

According to Friedman, these three factors legal structure, legal substance, and legal culture dynamically interact and influence each other to form a well-functioning legal system. A good legal system requires not only clear regulations

²⁰ibid

²¹Ibid

and an organized system, but also a supportive legal culture and behavior of legal actors that aligns with the values of justice and professionalism. Effective law enforcement, according to Friedman, cannot be achieved if any of these three factors are ignored. Therefore, to create a truly effective and socially acceptable legal system, it is important to consider these three elements holistically, to create a balance between written law, social practice, and legal implementation in the field.²²

2. Optimizing the Legal Authority of State Attorneys and Prosecutors in Marriage Annulments

Prosecutors are responsible for law enforcement, which aims to maintain order and legal certainty to prevent violations in society. The Civil and State Administrative Section is responsible for conducting and/or controlling law enforcement activities, providing legal advice, legal assistance, legal services, and other legal actions to the government, the state, and the public in civil and state administrative cases.²³

In civil matters, the Prosecutor's Office has the authority to enforce what is stipulated by law or based on final and binding court decisions. To fulfill legal objectives, such as maintaining legal order and stability, protecting national and government interests, and the civil rights of the community,²⁴ One example is the annulment of a marriage.²⁵ As a State Attorney, in addition to acting as a government lawyer in civil and state administrative matters, he also has the responsibility to help people who are experiencing civil problems.²⁶

4. Conclusion

Based on the research results and discussion, the following conclusions can be drawn: 1. The authority of the State Attorney in annulling a marriage is based on Law Number 1 of 1974 concerning Marriage, KHI. The annulment of the marriage in question can be carried out by the Prosecutor based on Article 26 of Law Number 1 of 1974 concerning Marriage, and KHI Article 73 letter (c) that the

²²Ibid

²³Denny Saputra, Kurniawan, Andi Surya Perdana, and Hendrik Murbawan, "The Role of Prosecutors in the Indonesian Judicial System," *Halu Oleo Law Review*, 6, Issue 2, (September 2022): p. 230

²⁴Defry Tirta Tulangow, Said Aneke R, Oliij Aneke Kereh, "The Authority of the Republic of Indonesia Prosecutor's Office as State Attorney in Handling Civil Cases", *Lex Crimen*, X, No. 11, (Oct 2021), p. 139.

²⁵Mukhtar, Adriansya., Ma'ruf Hafidz, "Muhammad Fachri Said. The Position of the Prosecutor as an Executor Representing the State in the Criminal Justice System", *Jurnal Of Lex Generalis (JLS)*, 3, No. 4, (2022), p. 840

²⁶I Komang Tri MRP, Komang Febrinayanti D., Dewa Bagus S., "Implementation of the Role of State Attorneys in Assisting the Community to Resolve Civil Cases at the Buleleng District Attorney's Office", *Jurnal Ilmi Hukum Sui Generis*, 5, No. 1, (January 2025), p. 8

Official authorized to annul a marriage is the Prosecutor. The Prosecutor's actions in annulling a marriage are in accordance with the theory of authority where there is attributive authority granted to the Prosecutor based on Law Number 11 of 2021 concerning Amendments to Law Number 16 of 2004 concerning the Prosecutor's Office of the Republic of Indonesia. 2. Optimizing the authority of the State Attorney General in annulling a marriage is done first by improving specific regulations, because currently the operational regulations regarding the technical mechanisms of the State Attorney General in filing an annulment are not specifically regulated. Harmonization of regulations is needed so that execution in court is more focused. Second by carrying out prevention (Preventive), because optimization is not only in the form of litigation (proceedings in court), but also preventive efforts through socialization and counseling to the public about the importance of registering marriages according to procedure. Third, collaboration between related agencies, where the State Attorney General can enforce civil law by working together with the Ministry of Religious Affairs and Religious/District Courts to minimize the occurrence of invalid marriages or underhand marriages that are detrimental to one of the parties.

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