

# Contradiction: Inclusion of multiple dispute settlement clauses in the agreement

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## Contradiction: Inclusion of multiple dispute settlement clauses in the agreement

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### Abstract

*Dispute settlement clauses hold greater significance in Indonesia because they aid in providing clear procedures and mechanisms for resolving disputes among parties, reducing misunderstanding, and ensuring that both parties have the clarity to resolve conflicts. The present study has incorporated a “qualitative normative judiciary approach” to assess the dispute resolution clauses in Indonesia. Results indicated that by establishing and deciding a particular method for resolving disputes, the Indonesian dispute resolution clauses can help in preventing costly legal battles among parties. For resolving disputes, different methods are in common to be implemented by Indonesian disputed parties which include litigation, mediation, arbitration, negotiation, and conciliation etc. These clauses are regulated based on varied regulations and rules such as the arbitration framework is supervised, monitored, and governed through Law No. 30 of 1999. Similarly, BANI and LEMAN are also widely implemented legal frameworks that focus on resolving disputes. The present research holds numerous theoretical and practical implications. This study extends the growing body of literature regarding dispute resolution clauses in agreements. Practically this research provides beneficial insights regarding the ways through which disputes can be resolved in Indonesia following the legal framework.*

Keywords: Dispute resolution, Clauses, Arbitration, Mediation, Negotiation, Conciliation, Litigation

### 1. Introduction

The purpose of the present study is to examine the legal frameworks and techniques for dispute resolution by analysing multiple dispute settlement clauses. Indonesia has transitioned out of the economic and political uproar of the late 1990s, which has been associated with moments of conflicts and disputes throughout the country (Kurniarahman & Anas, 2020). There have been numerous large-scale disputes in regions such as Aceh, Papua, Kalimantan, and Central Sulawesi (Wilson, 2018). Most Indonesians settle their disputes using informal channels, indicating an

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insufficiency of the formal system. Moreover, informal channels of dispute resolution offer local legitimacy and authority to the parties, leading to a timely and cost-effective dispute settlement (Sari, 2018). Common conflicts and disputes are integral to human life and cannot be divorced from it. Nearly, every individual or organisation has faced disputes at internal and external levels. Studies have shown that dispute settlements through court are a very time-consuming and tedious process (Hatta, 2019). In addition, the heterogeneity of the population residing in an area is a primary factor leading to conflicts and disputes (Warjiyati, 2019). The legal system in Indonesia is based on civil law, customary law, and Islamic law (Dewi, 2019). It is primarily under the influence of the Dutch legal system, in accordance with the concordance principle (Warman, Isra, & Tegnan, 2018). Nonetheless, the Indonesian Constitution of 1945 ("UUD 1945") preserves the fundamental principles, which specifies the Indonesian law, encompassing the power distinction between the executive, judicative, and legislative institution (Ahmad & Nggilu, 2019). Thus, the Indonesian legal framework for dispute settlement is generally categorised into Arbitration, Alternative Dispute Resolution (ADR), and Court litigation (Yudhantaka, Lutfiasandhi, & Handojo, 2019). In Indonesia, the Code of Civil Procedure (*Herzien Inlandsch Reglement* or "HIR"), and the Code of Criminal Procedure (*Kitab Undang-Undang Hukum Acara Pidana* "KUHAP") regulate the procedural legal framework for the General Court. HIR mostly regulates civil and commercial disputes, and KUHAP handles the judicial procedures for criminal disputes (Pangestu, Suyanto, & Agustanti, 2021).

The Law of the Republic of Indonesia No. 48 of 2009 on Judicial Authority ("Law 48/2009") regulates the General Judiciary in the country and categorises it into Civil Court and High Court (Aristo, 2020). Furthermore, the Supreme Court of Indonesia (*Mahkamah Agung* or "MA") is the highest hierarchy of the General Court in Indonesia, which is further divided into four judicial divisions: Courts of General Jurisdiction/*Peradilan Umum*, Military Courts/*Peradilan Militer*, Religious Courts/*Peradilan Agama*, and State Administrative Courts (Simon, 2019). In addition, there are various judicial institutions in the legal framework of Indonesia to settle various disputes. Religious courts settle the disputes of inheritance and other domestic conflicts such as domestic violence (Nisa, 2021); commercial courts handle disputes of bankruptcy and properties (Ahmad, 2018); constitutional courts are responsible for legal regulations in the country (Lindsey, 2018); corruption courts are responsible for handling corruption cases (Najih & Wiryani, 2020); industrial relations court settles the employment disputes (Lanny, 2019); tax court regulates the tax disputes (Saptono, Khozen, & Ayudia, 2021); and administrative courts are responsible for the settlement of the disputes in the context of the government institutions (Kusdarini et al., 2022). Furthermore, several disputes in Indonesia are settled through the ADR, a way to settle disputes without going to court. ADR is regulated within the framework of "Law No. 30 of 1999 on Arbitration and Alternative Dispute Resolution", which was later amended in 2014 by the Constitutional Court "Decision No. 15/PUU-XII/2014" (Israhadi, 2018). This law entails the settlement of disputes outside the courts by consultation, negotiation, mediation, or conciliation (Emirzon & Sinaga, 2021).

Thus, the above-mentioned channels and frameworks of dispute settlement in Indonesia highlight the inclusion of multiple dispute settlement clauses in the country's legal framework. The present study aims to present a comprehensive analysis of the legal framework for dispute settlement in Indonesia, focusing on the factors behind the inclusion of multiple dispute settlement clauses in its agreements. Moreover, it is essential to examine the legal framework of Indonesia to analyse the significance of multiple dispute settlement clauses in its agreement. The present study also highlights the role of the courts in the dispute settlements of various kinds. In addition, the study emphasizes the legal implications of the multiple dispute settlement clauses.

## **2. Method**

The present study provides a qualitative exploration of the inclusion of multiple clauses for dispute settlement in the legal framework of Indonesia. The qualitative nature of the study allows an in-depth understanding of dispute settlement in the legal landscape of Indonesia. Therefore, the study is based on the research philosophy of interpretivism, which entails the significance of subjectivity in the pursuit of truth and knowledge and emphasises the social and contextual factors (Nickerson, 2022). The interpretive research philosophy is appropriate for the present study as it ensures the inclusion of contextual factors in the analysis of dispute settlement in the legal framework of Indonesia. The researcher has applied the inductive approach for the present study as it is based on the collection of specific primary data gathered from the legal documents and auxiliary publications, allowing the researcher to explore the clauses of dispute settlement within the legal framework of Indonesia. This inductive approach leads to the formation of general conclusions. The primary data for the present study has been collected from the legal documents such as the legislation of Indonesia, and various court documents concerning the cases of dispute settlements. These official documents facilitate the collection of essential data to analyse the legal implications of dispute settlement clauses in the context of Indonesia. Thus, the collection of data from these official documents makes the findings of the study authentic, credible, and reliable. Furthermore, the researcher has also collected secondary data from various scholarly publications and articles related to the legal framework of dispute settlement in Indonesia such as Hein Online, JSTOR, NEXIS, Wiley Online Library, and West Law. Thus, the findings of the present study provide a broader and more comprehensive understanding of the legal framework of dispute settlement in the context of Indonesia. The method of data analysis applied in the present study is content analysis, which leads to an in-depth analysis of the primary and secondary data.

## **3. Literature Review**

The present section seeks to present a comprehensive review of the past studies on dispute settlements in the global context. Moreover, the section explores the legal frameworks of dispute settlement in various common law and civil law countries to analyse their legal implications.

### **3.1. Dispute Settlement in Common Law Countries**

In the context of the U.S.A., a common law country, the ADR has historically posed serious challenges to the formal legal channels for solving social issues, and therefore, it is more commonly applied in the formal proceedings of courts (Amandong, 2021). Simultaneously, people often opt for the private techniques of dispute settlement such as arbitration, mediation, and other hybrid techniques (Menkel-Meadow, 2018a). Thus, people can choose to avoid a formal justice framework for the settlement of their personal and commercial disputes, which has resulted in the increased privatisation of justice (Streltsova, 2018). The year 1938 is regarded as a crucial year for the regulation of dispute settlement in the U.S.A. In 1938, a committee of lawyers, judges, and scholars drafted the Federal Rules of Civil Procedures, which were later enacted by a passive authorisation of the U.S. Congress. In this context *Erie v Tompkins* was a landmark and significant Supreme Court case in the history of the U.S. This case had a significant impact on the development of federal and state law in the country. The primary issue in this case was whether federal common law could be applied in diversity jurisdiction cases, referring to cases where parties involved are from different states. The case involved a Pennsylvania man named Tompkins getting injured while walking through a railroad owned by the Erie Railroad Company in Pennsylvania. The Claimant sued the Defendant in the SC. However, according to the federal common law, the claimant had no right to claim, because he was a mere trespasser. On the other hand, under the state law of Pennsylvania, he had a valid claim. The SC acknowledged the absence of federal general common law for diversity jurisdiction. Thus, the court declared the state law in diverse cases in American federal courts and enforced the federal common law (Roosevelt III & Jones, 2019). The formal regulatory landscape for dispute settlement in the U.S. consists of the U.S. Constitution; Federal legislation; Federal rules of civil procedure; Common law jurisprudence along with many precedents from the SC and the federal courts regarding the ADR issues; agency rules and practices of the administration; State legislation, State common law and decision law; Uniform Mediation Act/ Uniform Arbitration Act; private contracts; private decision law; and private organisational system of dispute settlement (Born & Rutledge, 2022). For instance, the Federal legislation for dispute settlement in the U.S. consists of the Civil Justice Reform Act of 1990, the Administrative Dispute Resolution Act of 1996, Alternative Dispute Resolution Act of 1998 (Menkel-Meadow, 2018b).

The English judicial and arbitral systems are regarded as very efficient, allowing the relevant parties to make use of the flexibility offered by the court and arbitral rule framework. Based on the common law tradition, the English legal system bounds its courts by the principle of precedent. The Civil Procedure in England is regulated by the Civil Procedure Rules (CPR) 1998, which are updated regularly (Rab, 2021). *Halliburton v Chubb Bermuda Insurance Ltd* was a significant decision taken by the SC in the U.K. as it involved arbitration for the insurance dispute. Halliburton, an oilfield services company, had purchased insurance coverage from many parties, which included Chubb Bermuda Insurance Ltd, in exchange for specific liabilities from the 2010 Deepwater Horizon oil rig explosion. A dispute arose among the parties regarding the distribution of liability among them. The central issue was whether an arbitrator in a case, which involved multiple insurance policies with similar clauses

for arbitration could establish an award connecting all of the issuers. The SC ruled that the arbitrator had the authority to make an award, binding to all the insurers. This ruling supported the principle of one arbitration in the context of multiple insurance policies based on similar terms (Lincoln, 2021). Furthermore, *Civil Aviation Authority v R Jet2.Com Ltd* was a famous legal dispute between the Civil Aviation Authority (CAA) and Jet2.Com Ltd regarding the interpretation of the EU Air Passenger Rights Regulation (Regulation (EC) No 261/2004). The premise of the issue was whether airlines were obligated to compensate their passengers in case of flight delays due to technical defaults. The Court of Appeal decided that technical defects cannot exempt the airline from its obligation to compensate its passengers in case of flight delays, thus clarifying the liability of the airline to compensate its passengers in case of flight delays (Biard, 2019).

### **3.1. Dispute Settlement in Civil Law Countries**

France has a civil law system in which the primary sources of law are the legal statutes. The legal system in France entails a hierarchy of norms, with the Constitution of 4 October 1958 at the top of the hierarchy. This constitution comprises the 1789 Declaration of Human and Civil Rights, the Preamble of the 1946 Constitution and the 2004 Charter for the Environment. International treaties and European Union (EU) law are at the second level of the hierarchy and are followed by Parliament laws, government regulations and the guidance of administrative authorities. The Civil Procedure Code (Articles 1528 to 1567) establishes a framework for the ADR procedures. Moreover, the Civil Procedure Code (Articles 1442 to 1503) regulates domestic and international arbitrations (Lee, Dessault, & Tricard, 2023).

## **4. Findings**

### **4.1. Legal framework in Indonesia concerning dispute resolution.**

In Indonesia, dispute resolution is governed through different means which are based on the legal framework in the country. These means primarily includes arbitration, litigation and mediation. The key aspects concerning legal frameworks for the dispute resolution in Indonesia are presented below:

- *Judicial System of Indonesia*

The main forum through which disputes are resolved in Indonesia is the judicial system. There are different levels of courts included in the judicial systems of the country. These includes the Supreme court of Indonesia “Mahkamah Agung” at the highest level. At the local level, the district courts “Pengadilan Negeri” are responsible for managing the criminal and civil cases. The commercial courts of Indonesia “Pengadilan Niaga” are obliged to manage the commercial disputes. The Indonesian judiciary law is obliged to handle the Indonesian court system “Undang-Undang Mahkamah Agung” (Hastono & Yos Johan Utama, 2023). The judicial system of Indonesia is investigative in nature where the court of law pursue the facts of disputes actively by working closely with other aspects of Indonesia Law enforcement agencies.

- *Arbitration*

For dispute resolution, arbitration is also an important technique applied in Indonesia. In the country, the arbitration framework is supervised, monitored and governed through Law No. 30 of 1999 regarding “arbitration and alternative dispute resolution”. The BANI “Badan Arbitrase Nasional Indonesia” which is the Indonesian National Board of arbitration is a well-known arbitration institution in Indonesia (Ahmad, 2019). According to, BANI is among one of the most recognized arbitration institutions in the country. This is due to the fact that it provides administrative assistance for the proceedings of arbitration. An arbitration institution can be specified by the parties involved in dispute resolution along with the rules related to the arbitration procedure in the agreements. Therefore in the Indonesian courts, arbitration awards are often enforceable (Hassanah, 2022). Moreover, Indonesia is a signatory to the 1958 “United Nations Convention” regarding the recognition and enforcement of global arbitral awards “1958 New York Convention”. The “Law No 30 of 1999” did not corresponds with the application of **UNCITRAL model Law on “International Commercial arbitration 1985”** (Suwarsit & Arifardhani, 2022). According to the “Law NO. 30 of 1999” the application of global arbitral awards in the country can merely be sought through the “Central Jakarta District Court” “and the supreme court if the Republic of Indonesia is a party to arbitration” (Bell, 2022). In Indonesian courts, arbitration is considered an efficient and effective alternative to the conventional litigation in the Indonesian courts. This is due to the fact that it offers the parties a greater degree of confidentiality, flexibility and the ability to choose their arbitrators. Due to this, the disputes can be effectively resolved, particularly in the commercial sector.

- *Mediation*

According to, in Indonesia mediation is also widely implemented as an effective dispute resolution method. The mediation center in Indonesia “LEMAN or Lembaga Mediasi Nasional” ensures the provision of mediation services to resolve disputes within parties. LEMAN also promotes mediation as an effective way of dispute resolution. Parties usually engage in mediation if negotiation fails. Mediation is an effective way of managing disputes because it ensures the involvement of a third party that deals with disputes neutrally. Mediation is helpful as it aids in facilitating discussions among the disputed parties so that they can reach at a mutually acceptable resolution. Indonesian disputes are majorly resolved through mediation. In mediations emerging from the “alternative dispute resolution”, the act of arbitration and dispute resolution” in accordance with the Law No. 30 of 1999 act implies a staged mediation aligned with increasing intervention of the third party (Hapsari, Ilmiawan, & Samira, 2022; Prastowo, 2022). In a mediation agreement, there shall be a direct meeting among the parties within 14 days.

Although the legal framework for mediation in Indonesia is governed primarily through Law No 30 of 1999 regarding arbitration and alternative dispute resolution. As the law is named as “Arbitration,” it includes different alternative methods for dispute resolution in which mediation is the most commonly used method. Moreover, the regulations of government named as Regulation No. 34 of 2016 ensures the provision of further details regarding dispute resolutions in which mediation is also

included. In Indonesia, Mediation is usually observed as a voluntary procedure (Baiquni, 2022). The parties involved in any dispute may choose mediation so that their disputes or issues might get resolved. The parties can suggest resolving conflicts or disputes through mediation or the court may refer the parties to resolve conflicts through mediation. In Indonesia, the idea of mediation for dispute resolution also corresponds with the method of mediation. In this method, the disputing parties continue to resolve disputes in the presence of a “neutral third party” following the negotiation failure. However, the third party involved in conciliation refer as the conciliator must take part actively in persuading the parties towards reaching a mutually accepted agreement.

- *Litigation*

Litigation can also be adopted as an effective method for dispute resolution in Indonesia. It is usually considered as the last resort. This is due to the fact that resolving disputes through litigation is costly and time consuming as compared to other methods of mediation, arbitration and negotiation etc. The commercial disputes can be managed by the Indonesian courts. The parties may include venue clauses and jurisdiction in their agreements. Indonesia is based on the hierarchal court system where different types of courts are included. These includes district, high and supreme courts. A wide range of cases is also resolved through civil litigation in Indonesia. These includes property disputes, contract disputes, the family law issues and others. Therefore, the parties involved in civil disputes might commence litigation through filing a lawsuit with adequate district court. As far as the criminal litigation is concerned, it involves the cases in which government prosecutes entities or individuals for the alleged breaching or violations of criminal laws. The office of public prosecutor might involve in bringing the criminal cases to the court. The defendants in this regard might have the right to legal representations. In Indonesia, the labor disputes are usually resolved through litigation in the “Industrial Relations Court” (Pengadilan Hubungan Industrial) (Prastowo, 2022). In these cases, mostly issues related to employment are covered including wrongful termination, workplace conflicts or disputes related to trade unions.

- *Negotiation*

Negotiation is usually the first step in resolving disputes and conflicts. In this method, the parties involved in disputes might agree to resolve it through negotiation in a good manner. Through this, a particular time limit may be set for negotiation. In this way, senior management may be involved along with the designated representatives. Negotiation itself is not monitored through a particular legal framework but it plays an essential role in the overall process of dispute resolution in accordance with the Indonesian law. The method of negotiation is usually a volunteer process in Indonesia. Those parties who engage in a dispute may choose to involve in negotiations so that their differences can be resolved. The process of negotiation enables the parties to directly interact with each other, express their issues and find effective ways to explore solutions to deal with the disputes (Tjandra, 2010). Mostly negotiation is preferred before any “formal proceedings.” The parties involved in disputes may attempt to interact, negotiate and effectively communicate



so that their disputes can be settled informally before seeking any formal way to resolve dispute such as litigation, mediation and arbitration. According to the article 6 of regulation 30/1999 refers negotiation as a direct meeting of the parties involved in disputes for the purpose of reaching a mutually accepted agreement (Frederik et al., 2023; Karjoko et al., 2021).

Negotiation therefore results in a written agreement among the disputing parties. In accordance with the principle of "pacta sunt servanda" where agreements must be monitored as law by the contracting parties" such resolution is binding regarding both the parties and therefore must be consider finalized. This corresponds with the Article 6 (8) of the regulation 30/1999 which explains that the written agreement for the dispute settlement is binding and final for both the parties to be executed in a good way.

## **5. Recommendations**

The present paper has presented a qualitative exploration of various types of conflicts and their settlements through the legal channels of Indonesia. The paper has also examined the use of courts and the formal legal system, thus presenting a comprehensive picture of the legal implications of the clauses for dispute settlement in the country. Furthermore, the inclusion of multiple dispute settlement clauses in the legal framework of Indonesia has highlighted various legal challenges and uncertainties. Based on the findings of the study, the following Recommendations and suggestions can be delineated to improve the legal framework of Indonesia, which would lead to smoother and more efficient settlement of disputes.

- The legal institutions in Indonesia should emphasise the clarity and consistency in dispute settlement clauses. The language of these clauses should be clear to avoid contradictions in their interpretations.
- A comprehensive review of the local mechanisms of dispute settlements, such as community councils, and ADR is essential to harmonise these mechanisms and implement a consistent approach to dispute settlement.
- There is an urgent need to clarify the jurisdictional boundaries of different mechanisms of dispute settlement to avoid confusion regarding the inclusion of multiple clauses for dispute settlement within the legal framework of Indonesia.
- The government should raise public awareness regarding the dispute settlement processes and mechanisms through formal education and awareness programs, informing the residents about the various channels to settle their personal and professional disputes amicably.
- The individuals involved in the ADR channels should be provided with adequate training to make them effective arbitrators and mediators for dispute settlements.
- The individuals involved in the settlements of local disputes should have easy access to legal aid services and support.
- The use of ADR such as mediation and negotiation should be encouraged at the local level to ensure cost-effective and timely dispute settlements.

## **6. Conclusion**

The present study has presented a comprehensive examination of the clauses for dispute settlement in the legal framework of Indonesia. Thus, there are various

mechanisms and their associated legal implications regarding dispute settlement in Indonesia. The legal framework in Indonesia is based on a multifaceted approach to dispute settlement. The mechanisms for dispute settlement consist of traditional court litigation, and ADR, such as arbitration, mediation, conciliation, and negotiation. This availability of diverse techniques for dispute settlement allows the parties to choose the technique best suited to their dispute. This flexibility in the legal framework for dispute settlement represents Indonesia's commitment to providing an efficient dispute settlement to the parties involved. However, one of the significant challenges associated with the traditional court litigation of disputes is the backlog of the cases. This backlog delays the cases for an eternity and costs the litigants a huge amount of money. The legal framework of Indonesia regarding dispute settlement emphasises fairness, accountability, and impartiality. Thus, Indonesia offers a diverse mechanism for dispute settlements among the parties, including special courts for disputes from domestic life, the commercial field, the industrial sector, the banking sector, and disputes related to tax evasion.<sup>7</sup>

## **7. Implications**

The present study holds both theoretical and practical implications in the legal perspective of dispute settlement in Indonesia.

### **7.1. Theoretical Implications**

The study holds significant theoretical implications as it highlights the multiple mechanisms of dispute settlement in the context of Indonesia. The study implies the significance of the exploration of the ways in which local dispute settlement mechanisms operate in Indonesia. Thus, the study questions the scales of local governance in the context of dispute settlement. The inclusion of multiple clauses for dispute settlement in the legal framework of Indonesia indicates a legal pluralism. The legal framework in Indonesia involves tradition, informal, and formal mechanisms for dispute settlement. The study holds significant theoretical implications regarding how these mechanisms interplay. Furthermore, the study implies the intricate dynamics of decision-making processes involved in dispute settlement at the local level.

### **7.2. Practical Implications**

The study implies that it is significant to address the inclusion of multiple clauses for dispute settlement to enhance the effectiveness and efficiency of the dispute settlement mechanisms. The harmonisation of these mechanisms can yield practical benefits in streamlining the settlement processes by reducing delays and disruptions. The coherence in the dispute settlement mechanisms will ensure easy access to justice for the residents. This access is very crucial for marginalized communities who find it difficult to get access to the formal legal systems. In addition, the present study highlights the significance of efficient resource allocation in the local dispute settlement mechanisms. The government should ensure the judicious allocation of resources to these dispute-settling bodies to provide easy justice to the parties. Moreover, the study implies the significance of community involvement in dispute settlement, which can be made possible through effective training campaigns to familiarize the residents with various techniques of dispute settlement.

### 7.3. Legal Implications

The present study also carries legal implications, as it emphasizes the clarification of legal frameworks concerning dispute settlement. This is necessary to eradicate any kind of confusion regarding the legal mechanisms of dispute settlement, and to make people aware of the procedures and channels of dispute settlement. Moreover, the study also implies the significance of legal certainty as people should have complete faith in the existing legal framework and channels for the provision of justice and dispute settlement.

Thus, the present study on the inclusion of multiple dispute settlement clauses in the agreement in the context of Indonesia's legal framework carries significant theoretical, practical, and legal implications.

### 8. Limitations

Like many other studies, the present study carries its limitations due to various factors. The constraints associated with the availability of data and access to the data poses a significant limitation for the present study. The access to confidential data regarding dispute settlement processes is restricted, which makes it challenging for the researcher to gather data for the study. This limitation also affects the depth of the content analysis as it is based on the primary and secondary data collected from various legal and scholarly documents. The study may not capture the contextual nuances in various regions in Indonesia due to diverse cultural norms and dispute settlement mechanisms across various regions in the country. In addition, the study is subjected to temporal restrictions as the practices of dispute settlement may evolve over time. The present study is solely focused on the dispute settlement clauses included in the legal framework of Indonesia. The future studies could focus on a comparative analysis of the dispute settlement clauses within the legal framework of Indonesia and that of some common law country to highlight the similarities and differences between both systems. This can provide a more comprehensive and extensive analysis of dispute settlement in the global context.

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