



## THE PROOFING OF THE CRIME OF SPREADING HOAX NEWS IN THE INVESTIGATION STAGE

Dimas Bagus Lisdiyantoro<sup>1</sup>, Misbakhul Munir<sup>2</sup>, Dia Ayu Milatina De Vega<sup>3</sup>

<sup>1 2 3</sup> Faculty of Law, Universitas 17 Agustus 1945 Semarang

E-mail: [dimasregident@gmail.com](mailto:dimasregident@gmail.com)

**Abstract:** To control the crime of spreading hoax news, the government has made and updated Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions in the Law. It will be enforced with Article 45 A paragraph (1). The formulation of the problem in this study is 1) How is the implementation of investigations against perpetrators of hoax news spreaders who cause trouble among the community 2) What are the obstacles for investigators in uncovering cases related to evidence of violations of the Electronic Information and Transactions (ITE) Law on hoax news? The research method used is juridical empirical. This approach means that the study of research data is guided by the law of proving the spread of hoax news. The results of this study concluded that 1) Implementation of investigations against perpetrators of hoax news spreaders who are perpetrators of criminal acts of information and electronic transactions that cause trouble in the community with evidence of hoax news spreading by tracing users of hoax news spreading accounts following Article 28 paragraph (1) of Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. 2) Obstacles of investigators in uncovering cases related to evidence of a violation of the ITE Law on Hoax News a) Evidence of crime from computer equipment, mobile phones, and various electronic media that can access the internet can be easily destroyed or removed; b) The suspect gave convoluted information; c) Cases of violations of the ITE Law are carried out with groups or individuals whose average perpetrators are still young in their activities and sometimes have networks outside the city; d) In general, the perpetrators have many fictional accounts created regarding violations of the ITE Law; e) Inadequate facilities and infrastructure of officers in conducting investigations.

**Keywords:** Authority, Corruption, Investigation.

**Abstrak:** Untuk mengendalikan tindak pidana penyebaran berita hoax pemerintah telah membuat dan memperbaharui Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 tentang Informasi dan Transaksi Elektronik dalam Undang-Undang tersebut maka akan di tegakkan dengan Pasal 45 A ayat (1). Rumusan masalah pada penelitian ini adalah 1) Bagaimana implementasi Penyidikan terhadap pelaku penyebar berita hoax yang mengakibatkan keonaran di kalangan masyarakat 2) Bagaimana kendala penyidik dalam mengungkap kasus terkait alat bukti pelanggaran Undang-Undang ITE berita hoax? Metode penelitian yang digunakan yuridis empiris. Melalui pendekatan ini berarti pengkajian data penelitiannya berpedoman pada hukum pembuktian penyebaran berita hoax. Hasil penelitian ini menyimpulkan bahwa: 1) Implementasi Penyidikan terhadap pelaku penyebar berita hoax yang terhadap pelaku tindak pidana informasi dan transaksi elektronik yang mengakibatkan keonaran dalam masyarakat dengan barang bukti penyebaran berita hoax dilakukan penelusuran pengguna akun penyebar berita hoax sesuai dengan Pasal 28 ayat (1) Undang-Undang Nomor 19 Tahun 2016 tentang Perubahan Atas Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik. 2) Kendala penyidik dalam mengungkap kasus terkait alat bukti pelanggaran Undang-Undang ITE Berita Hoax a) Barang bukti hasil kejahatan perangkat komputer,

handphone, dan berbagai media elektronik yang dapat mengakses internet dapat dihancurkan atau dihilangkan dengan mudah; b) Tersangka memberikan keterangan berbelit-belit; c) Perkara pelanggaran Undang-Undang ITE dijalankan dengan kelompok ataupun individu yang rata-rata pelaku masih muda dalam kegiatannya dan terkadang mempunyai jaringan diluar kota; d) Umumnya pelaku mempunyai banyak akun fiktif yang dibuat menyangkut pelanggaran Undang-Undang ITE ; e) Sarana dan prasarana petugas dalam melakukan penyidikan yang kurang memadai.

**Kata Kunci:** Kewenangan; Korupsi; Penyidikan.

## A. Introduction

Any information issued to individuals and business entities through social and electronic media when sent and read by many people can affect the emotions, feelings, thoughts, and even the actions of a person or group who reads it. It is unfortunate if the information submitted is inaccurate, especially if it is information about news (hoax) with a provocative title that leads readers and recipients to negative opinions. (Sinaga et al., 2019) Negative opinions are in the form of defamation, hate speech, and the spread of fake news or hoaxes that are received and attack parties or make people afraid, feel threatened and can harm the reported party so that it can damage the reputation and cause material losses. So, in this case, the spread of cyber hoaxes is a rapidly viral phenomenon in Indonesia, considering that half of Indonesia's population are active internet users and are part of the cyberspace population. They are the primary targets for the production and circulation of hoax news. (Ratmono, 2018)

The word hoax comes from "hocus pocus," which initially is Latin "hoc est corpus." It means 'this is the body.' Magicians commonly use this word to claim that something is true, but it is not necessarily true. This hoax is often circulated on social media (sosmed). Hoax is also fake news in an attempt to influence readers or distributors to believe some information, even though the news source knows that the news conveyed is false and has no basis at all. (Nasution, 2017)

In its development, the Law has been changed to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 regarding Information and Electronic Transactions which have been enforced in society to ensnare perpetrators of ITE violations. The law will then be discussed and applied in this article, namely Article 45 A paragraph (1) that:

*"Every person who intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions as referred to in Article 28 paragraph (1) shall be sentenced to a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiahs)."*

The sound of Article 28 paragraph (1) states that:

*"Every person intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions."*

These investigative activities carried out by the National Police significantly affect the implementation of the Criminal Law and the Criminal Procedure Code itself. The investigation process is the first step in the law enforcement process carried out by law enforcement actors in Indonesia. (Abdul Rachman, 2000) In handling hoax news using proving, the Police of the Republic of Indonesia first referred to Article 184 paragraph (1) of the Criminal Procedure Code, which stated that valid evidence is: witness statements, expert statements, letters, instructions, and statements of the defendant. In a criminal procedural law proof system that adheres to the negative stelsel

wettelijk, only legal evidence according to the law can be used for evidence. (Handayani & Parlindungan Siregar, 2020)

The crimes discussed in this study are the researchers taking the case in the Balebandung area in the Criminal Decision Number 553/Pid results.Sus/2019/PN.Blb with the suspect SN bin MI intentionally and without rights spreading information aimed at causing hatred or hostility to specific individuals and/or community groups based on ethnicity, religion, race, and inter-group (SARA) as referred to in Article 28 paragraph (2) of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions. At first, the defendant SN bin MI opened his Facebook account with the name “Bsfc Zaim Oouda” URL: <https://www.facebook.com/Bsf150c>; in the Facebook account, there was a video regarding the arrest of a fake ID card maker by the TNI. The defendant downloaded the video using the Facebook downloader application that the defendant had previously installed from the Google Playstore. The defendant saved the video in the cellphone gallery with the OPPO A3S brand. Because the news has a political element that is not true, as a result of the uploaded video from the defendant, it has caused unrest in the community, which can lead to SARA (ethnicity, religion, race, and inter-group relations), so that the defendant SN bin MI’s actions have fulfilled the elements of violating Article 45 A paragraph (2) and Article 28 paragraph (2) Law Number 11 of 2008 concerning Information and Electronic Transactions.

Based on West Java Regional Police statistical data, the number of hoax news reports and resolutions from January 2017 to December 2020 can be seen in table 1 (one) below.

**Table 1**  
**Report and Settlement of Hoax News Cases in the West Java Regional Police Legal Area from 2017 to December 2020**

No.	Year	Types of Hoax News	Number of Cases
1.	2017	1. Social politics	598
		2. SARA (ethnicity, religion, race, and inter-group relations)	410
		3. Health	170
		4. Obituary	105
		5. Science and technology	127
		Total	1.410
2.	2018	1. Social politics	476
		2. SARA (ethnicity, religion, race, and inter-group relations)	234
		3. Health	130
		4. Obituary	141
		5. Science and technology	89
		Total	1.070
3.	2019	1. Social politics	345
		2. SARA (ethnicity, religion, race, and inter-group relations)	228
		3. Health	230

		4. Obituary	224
		5. Science and technology	113
Total			1.140
4.	2020	1. Social politics	340
		2. SARA (ethnicity, religion, race, and inter-group relations)	220
		3. Health	214
		4. Obituary	199
		5. Science and technology	67
Total			1.040
Total Amount from 2017 to 2020			4.460

Source: Unpublished Criminal Data from 2017 to 2020 West Java Ditreskrimsus

The description of the case proves that there are many negative impacts of technological developments, and not all information obtained has a positive effect on every reader. The development of a technology known as the internet has changed the pattern of community interaction. Advances in information technology, especially in the online world, have been used by the community as a tool to obtain information and other political interests. However, with the ease of creating, many irresponsible parties take advantage of this opportunity for things that harm others.

Those are the types of hoax news that develop in the West Java Region according to the crime data of the West Java Police Ditreskrimsus. The types of hoax news that the researchers took from the data of news violations which were relatively high were Social Politics, Health, Obituary, Science and Technology, and others. Based on data for the last 4 (four) years from January 2017 to December 2020, the number of case reports regarding hoax news handled by the West Java Regional Police was 4,460 cases of hoax news. This case can be resolved with more settlements because, at the time of the arrest, the defendant was known at the location with the help of tracking and email.

In its development, the Law has been changed to Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 regarding Information and Electronic Transactions, which has been enforced in society.

## B. Formulation of the Problems

1. How is the implementation of investigative evidence against hoax news spreaders cause trouble among the public?
2. How are investigators' obstacles in uncovering cases related to evidence of violations of the ITE Law on hoax news PT. IMIP in North Morowali Regency?

## C. Research Method

This study uses an empirical juridical approach, which implements the facts of the field reality focused on the research problem. This approach is often known as the sociological approach, where after the data is collected, it leads to the research problem, namely the hoax crime. (Rideng, 2013) This study will find evidence against the perpetrators of hoax news spreaders, proven in Article 184 paragraph (1) of the Criminal Procedure Code, which will trap perpetrators of violations of the ITE Law. This research is based on legal principles, norms, or other legal regulations that investigate criminal acts of information and electronic transactions from evidence law. (Bambang Sunggano, 2011)

## **D. Discussion**

### **a. Implementation of Evidence Against Perpetrators of Hoax News Spreaders That Cause Troubles Among the Community**

Police officers who carry out investigation tasks are called investigators based on Article 1 paragraph (4) of the Criminal Procedure Code. An investigator is every police officer of the Republic of Indonesia authorized by this Law to conduct an investigation. Under Article 4 of the Criminal Procedure Code, those assigned to carry out investigative functions are Police Officers. In conducting general criminal investigations, the Police officers are the sole investigators mandated by the Criminal Procedure Code. (Hutahaeen & Indarti, 2019)

For the investigation to run effectively and efficiently, the investigator makes an investigation plan outlining the investigation's objectives, the appropriate techniques and tactics to be used, the equipment used, and administrative completeness. To control the investigation, in carrying out the duties of the investigator, the investigator must obtain an investigation warrant issued by the investigator's superior, but if under certain circumstances or urgency, the investigator can investigate by seeking verbal approval from the investigator's superior or immediately reporting after conducting an investigation. Then after conducting an investigation, the investigator shall write down the results obtained in the Investigation Report, which will later be submitted to the investigator's superior. (Tinggi et al., 2020)

The Investigator's authority other than what has been determined by the Criminal Procedure Code and Article 24 of Perkap Number 14 of 2012 concerning Management of Criminal Investigations also provides instructions on what investigators must carry out activities.

Reports of an ordinary offense can be reported to the local Police in charge. The Police, based on the report, will conduct an investigation, checking whether the reported crime is or not. After the police conducted an investigation and confirmed that the reported incident was a criminal act of spreading hoax news that disturbed the public, the investigation process was increased to an investigative process. Evidence in criminal cases has started from the preliminary stage, namely investigation, and investigation. When the investigating officer begins to take his first steps in conducting an investigation, he is automatically and directly bound by the provisions of evidence as regulated in Article 184 paragraph (1) of the Criminal Procedure Code. An important target in investigative activities is to collect evidence to make light of the crime that occurred. Likewise, if an investigator determines that someone has the status of a suspect, at least the investigator must master the evidence referred to as preliminary evidence. So, although the most essential and decisive activity of evidence effort is at the level of case examination before a court session, the effort to collect evidence has played a role and functioned at the time of the investigation. (Rozi, 2019)

In the crime of spreading false news or hoaxes, law enforcement officers can carry out investigations and investigations against account owners in cyberspace because the Criminal Procedure Code (KUHAP) adheres to a negative statutory proof system (*negatief wettelijk bewijstheorie*). This is stated

in Article 183 of the Criminal Procedure Code, which reads, “A judge may not impose a sentence on a person unless with at least two valid pieces of evidence he obtains the belief that a criminal act has occurred and that the defendant is guilty of committing it.” “It is concluded from the sentence that it is clear that the evidence must be based on the Criminal Procedure Code, namely the legal evidence referred to in Article 184 of the Criminal Procedure Code, accompanied by the judge’s conviction obtained from the evidence”. (Rozi, 2019)

In fighting hoaxes and preventing the spread of the negative impacts of hoaxes, the government has an adequate legal umbrella. Article 28 paragraphs (1) and (2), Article 27 paragraph (3), Law Number 11 of 2008 concerning Information and Electronic Transactions which has now been amended by Law Number 19 of 2016, Articles 14 and 15 of the Law Number 1 of 1946, Articles 311 and 378 of the Criminal Code, as well as Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination are some of the legal products that can be used to combat the spread of hoaxes. (Nur Aisyah Siddiq, 2017)

In Law Number 11 of 2008, which has now been updated to Law Number 19 of 2016 concerning Electronic Information and Transactions, it has been regulated regarding criminal acts that intentionally and without rights spread false news or hoaxes that cause losses to consumers of electronic transactions and disseminate information to create feelings of hatred or hostility (see: Article 28 and Article 45 A) if Article 28 in conjunction with Article 45 A of the Electronic Information and Transactions Law is formulated in one text, the full details are as follows.

*“Every person who intentionally and without rights spreads false and misleading news that results in consumer losses in electronic transactions, shall be punished with a maximum imprisonment of 6 (six) years and/or a maximum fine of IDR 1,000,000,000.00 (one billion rupiahs)”.*

In Law 1 of 1946 Article 14 paragraph 1, the perpetrators of spreading false news/notifications to cause trouble among the people are sentenced to a maximum imprisonment of 10 (ten) years. Whereas in paragraph (2), the perpetrator who broadcasts a news or issues a notification that can cause trouble among the people, while he should be able to think that the news or notification is a lie, is sentenced to a maximum imprisonment of three years.

For example, a case of violation of the crime of spreading hoax news that caused public trouble is a case handled by investigators from the Directorate of Cyber Crime, the Criminal Investigation Department of the Police related to the crime of spreading false news (hoax) by the defendant SN bin MI, convinced that he was guilty of committing a crime “by broadcasting false news or notifications, deliberately publishing trouble among the people,” as has been proven by Article 184 paragraph (1) of the Criminal Procedure Code which is strengthened by valid evidence and by the Police Report number: LP-A/58/II/2019/SPKT, dated 04 February 2019 with Investigation Letter number SP.Sidik/19/II/2019/Ditreskrimsus, dated 07 February 2019 Notification of Investigation Commencement with number: SPDP/08/II/2019/Ditreskrimsus, dated 07 February 2019.

**b. Obstacles of Investigators in Revealing Cases Related to Evidence of Violation of the ITE Law Hoax News**

To overcome hoax news by the police, several obstacles hinder efforts to uncover cases related to evidence of violations of the ITE Law for Hoax news PT. IMIP in Morowali Regency, namely:

1) Legal Aspect

Some laws and regulations regulate the spread of fake news, starting from the Criminal Code (KUHP) and special laws that control it. However, there are still many in the community, especially on social media, where information dissemination is not following the applicable provisions that should be obeyed because it is for the security and order of the community itself.<sup>1</sup>

The material for legislation used so far, especially those that are primarily used for the interests or livelihoods of many people, in the process of making it very far from community participation (non-sociological), does not pay attention to the symbols of criticism that appear in the community, even though the material is relatively well structured, but only applies in detail and systemically to ordinary people, and is very weak for the lawmakers themselves (especially for certain parties to influence their interests with various kinds of compensation). The purpose of making laws and regulations is for order and legitimacy, which also considers competence. Legitimately, it must recognize in addition to social security as a state goal (certain regions) but also has achieved procedural legitimacy, although not yet substantive. (Sabian Utsman, 2008)

2) Investigator Aspect

According to investigators from the Ditreskrim Polda of Central Sulawesi, Sub-Directorate V Cyber, in this case, the obstacles related to evidence of violations of the ITE Law, hoaxes faced by the investigative team, included:

- a. Evidence of crime in the form of computers, mobile phones, and various electronic media that can access the internet can be easily destroyed or removed, making it difficult for investigators to find them.
- b. The suspect is convoluted in providing information.
- c. In the case of violations of the ITE Law, it is often carried out with groups or individuals whose average perpetrators are young in their activities and sometimes have networks outside the city. The disclosures or arrests of groups of suspects are often incomplete (only some are caught).
- d. Generally, perpetrators have many accounts. These accounts are fake or fictitious created to launch their actions involving violations of the ITE Law so that the Police find it difficult to trace.
- e. Inadequate facilities and infrastructure for officers in conducting investigations.

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<sup>1</sup>Results of Interview with AIPTU Chandra Purnama Investigator of the Cyber Crime Directorate, Bareskim Polri, 5 September 2021

In addition to the obstacles stated above, other obstacles need to be considered to minimize criminal acts of violating the ITE Law, namely: (Sabian Utsman, 2008)

1. Internal Obstacles

- a) The available operational costs are inadequate because the expenses incurred for the investigation process are pretty significant. Once in the investigation process, the required price is IDR 5,000,000 to IDR 10,000,000. In contrast, the articles of the association received by investigators from the Ditreskrimsus Unit of the Central Sulawesi Police in conducting the investigation process amounted to IDR 3,000,000 up to IDR 5,000,000.
- b) Weak coordination and cooperation between the Police and related parties and agencies related to handling criminal acts of violation of the ITE Law. In this case, the Police still rely on external personnel from the Police to track suspects with the help of the provider owner.
- c) Lack of Investigator personnel so that performance is less effective.
- d) There are still many investigators who have limited skills regarding ITE.

2. External Obstacles

- a) Lack of public awareness to report immediately if there are cases of violations of the ITE Law with elements of spreading false news (hoax).
- b) Lack of witnesses to be questioned in cases of criminal acts of spreading false news (hoax).
- c) Every year the number of criminal offenses against the ITE Law increases because access to the internet has been simplified and uncomplicated.

Every obstacle faced by investigators in the field, along with the best efforts made to minimize the occurrence of violations of the ITE Law on the issue of spreading false news (hoax), is always carried out based on the applicable laws and regulations.

3) Evidence Aspect

Currently, the legal evidence system in Indonesia (especially in Article 184 of the Criminal Procedure Code) does not yet recognize the term electronic/digital evidence as legal evidence according to law. There is still a lot of debate, especially between academics and practitioners, regarding electronic evidence. Meanwhile, in investigating hoax news cases, electronic evidence has an essential role in handling cases. The evidence in the case of hoax news is different from other evidence of the crime.

In addition, victim-witnesses in hoax news cases play a vital role. There are rarely witnesses in hoax crime news cases because victim-witnesses are outside the area or abroad, making it difficult for investigators to examine witnesses and file investigation results.

4) Facility Aspect

In uncovering cases of hoax news, facilities are needed that can support the performance of the police. The facility is in the form of a computer forensics laboratory that is used to reveal digital data as well as record and



store evidence in the form of soft copies (images, programs, HTML, sound, and so on).

Computer forensics is a branch of forensic science dealing with legal evidence found in computers and digital storage media. Computer forensics is known as digital forensics. The aim is to secure and analyze digital evidence and obtain objective facts from an incident or security breach of an information system. These facts will become evidence that will be used in the legal process.

5) Jurisdiction Aspect

Handling hoax news will not succeed if the jurisdictional aspect is ignored. Because the mapping that involves cyber-crime also involves the relationship between regions, regions, and countries. So that the determination of clear jurisdiction is necessary, the jurisdiction has been regulated in Article 2 of the Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 about Information and Electronic Transactions, namely:

*“This law applies to everyone who commits a legal act as regulated in this law, both within the jurisdiction of Indonesia and outside the jurisdiction of Indonesia, which has legal consequences in the jurisdiction of Indonesia and/or outside the jurisdiction of Indonesia and detrimental to the interests of Indonesia.”*

This law has a range of jurisdiction not only for legal actions that apply in Indonesia and/or carried out by Indonesian citizens but also applies to legal actions that are carried out outside the jurisdiction (jurisdiction) of Indonesia, whether by Indonesian citizens (WNI) as well as foreign citizens (WNA) or Indonesian legal entities or foreign legal entities that have legal consequences in Indonesia, considering that the use of information technology for information and electronic transactions can be cross-territorial or universal.

**E. Closing**

- a. The policy of Investigators in the Process of Investigating Criminal Actors of Information and Electronic Transactions with Current Positive Laws. Investigators in conducting investigations and investigations of evidence in the dissemination of hoax news can be carried out by tracing account users who spread hoax news, following Article 28 paragraph (1) of Law of the Republic of Indonesia Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 Regarding Electronic Information and Transactions (ITE Laws) states, “Everyone intentionally and without rights spreads false and misleading news that results in consumer losses in Electronic Transactions.” In fighting hoaxes and preventing the spread of the negative impacts of hoaxes, the government has an adequate legal umbrella. Article 28 paragraphs 1 and 2, Article 27 paragraph 3, Law Number 11 of 2008 concerning Information and Electronic Transactions which has now been amended by Law Number 19 of 2016, Articles 14 and 15 of Law Number 1 of 1946, Article 311 and 378 of the Criminal Code, as well as Law Number 40 of 2008 concerning the Elimination of Racial and Ethnic Discrimination are some of the legal products that can be used to combat the spread of hoaxes.

- b. Handling of Criminal Law Evidence with the Spread of Hoax News According to the ITE Law includes several elements, and these elements are as follows. The elements that make up the crime of spreading hoax news are divided into material and formal elements.
- 1) The first form is formulated materially  
The first ITE crime is formulated materially. In this case, the crime is complete when the consequences of the act have arisen. The act of spreading misleading, false news has resulted in the loss of PT. IMIP in Morowali is related to the spread of fake news (hoax).
  - 2) The second form is formally formulated  
The similarity with the first form is regarding intention, without rights, and the act of spreading. The same elements need not be discussed again.
- c. Obstacles of Investigators in Revealing Cases Related to Evidence of Violation of the ITE Law Hoax News PT. IMIP in North Morowali Regency
- 1) Evidence of crime in the form of computers, mobile phones, and various electronic media that can access the internet can be easily destroyed or removed, making it difficult for investigators to find them.
  - 2) The suspect is convoluted in providing information.
  - 3) In the case of violations of the ITE Law, it is often carried out with groups or individuals whose average perpetrators are young in their activities and sometimes have networks outside the city. The disclosures or arrests of groups of suspects are often incomplete (only some are caught).
  - 4) Generally, perpetrators have many accounts. These accounts are fake or fictitious created to launch their actions involving violations of the ITE Law so that the Police find it difficult to track them.
  - 5) Inadequate facilities and infrastructure for officers in conducting investigations.

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