

CONSUMER PROTECTION FROM DEFAULT OF SHARIA HOUSING DEVELOPER AGREEMENT

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ABSTRACT

Consumers frequently face issues with defaults on housing agreements, often driven by attractive low prices and developers leveraging sharia concepts. PT Fimadani Graha Mandiri (FGM), based in Bekasi, exemplifies this trend, utilizing Binding Sale and Purchase Agreements (Akad Istishna) and Sale and Purchase Agreements on Credit and Installments (Al-Bay' Bi Ad-Dayn Wa Bi At-Taqsith). These agreements delineate the rights and obligations of both developers and consumers. This study aims to analyze consumer protection within these agreements, focusing on safeguarding consumers against developer defaults and examining legal protections in consumer default lawsuits. Employing a doctrinal law method, the research synthesizes relevant rules, principles, and norms. Findings indicate that consumer protection mechanisms in these agreements include the right to accurate information, the ability to select products according to personal preferences, compensation for discrepancies in specifications, and timely delivery of housing. However, the effectiveness of consumer protection in judicial outcomes remains suboptimal. In several cases, PT FGM has denied compensation and refunds, citing a lack of funds and assets. Consequently, consumers face challenges in executing legal claims due to the inability to ascertain the company's assets. This analysis underscores the need for enhanced consumer protections and more effective judicial remedies to address defaults in housing agreements.

KEYWORDS Agreement, Consumer Protection, Default, Judgment Effectiveness



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INTRODUCTION

Having a place to live is a basic right owned by every citizen as stipulated in Article 28H Paragraph 1 of the 1945 Constitution, namely everyone has the right to live a prosperous life, live inwardly, and get a good and healthy living environment and the right to receive health services (UUD, 1945). A house is a basic need for humans, as a civilized creature, humans place a house not only as a place to live,

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but a house can be a place for family worship (religious aspect), a place for social interaction between family members to give each other reciprocity in social affairs (sociological aspect), a place where the educational process for all family members takes place or the exchange of knowledge (educational aspect), The house as a place to rest, to get calm, comfort and tranquility psychologically (psychological aspect) and the house can also be the center of family economic activities or a means to earn income (economic aspect) (Supeno & Ansori, 2019).

Currently, many models are offered by housing development companies in making sales. The company uses 2 (two) approaches used in conducting sales, namely the conventional system and the sharia economic system. Housing offerings with a sharia system are one of the promising businesses because more and more consumers want to use the sharia concept in making purchases or beliefs in housing itself. Non-Bank Sharia Mortgage is a financing scheme without bank intermediaries like house purchase transactions in general (Dewi & Suryaningsih, 2020). The system of selling and paying home installments is carried out directly to the developer. There is no consumer eligibility verification process for every potential home buyer. There are no penalties or fines if customers are late in paying installments. Existing problems are resolved through deliberation and familialism.

PT FGM, which is located in Bekasi City, chose this Non-Bank Sharia Mortgage model in selling its housing. The agreement used between the developer and the consumer is using the Binding Sale and Purchase Agreement (Akad Istishna), and the Sale and Purchase Agreement on Credit and Installment (Al-Bay' Bi Ad-Dayn Wa Bi At-Taqsith). The agreement contains the arrangement of rights and obligations between the developer and the consumer. The fulfillment of rights and obligations between the two is the limit of whether or not a default occurs in the agreement. This means that a breach of the agreement occurs if there are consumer rights that are not fulfilled by the developer. Consumer protection in the content of the agreement is the most basic thing in protecting developers and consumers.

Review of Consumer Protection Theory

The legal protection arrangements for KPR consumers against houses that do not meet specifications and fail to build by housing developers can be linked to Law Number: 8 of 1999 concerning Consumer Protection. The form of legal protection for housing consumers in this law is contained in consumer rights and obligations and prohibitions for business actors (Konsumen., 1999). Housing developers in this case can be interpreted as business actors. Consumer rights are regulated in Article 4 of the GCPL, namely: the right to comfort, security, safety, clear and honest information, the right to opinions and complaints and the right to compensation or compensation for goods that are not in accordance with what they should be. The obligations of business actors, in this case developers, according to Article 7 of the GCPL are: Good faith in running a business, providing clear and correct information about the goods or services sold, providing honest and non-discriminatory services for consumers and providing quality assurance for goods and services produced and providing compensation as a form of responsibility for the goods and services sold.

The responsibility of the developer as a business actor has been regulated in Article 19 through Article 28 of the GCPL. The responsibility of the developer or developer is to provide compensation for damage or pollution to consumers. The compensation can be given in the form of money or replacement of similar goods or services of equivalent value. The provision of compensation is carried out within 7 (seven) days after the date of the transaction and the compensation does not rule out the possibility of criminal or civil legal action to prove the existence of elements of guilt." (Agustina, 2023). This article certainly provides a safe guarantee for consumers in the event of default on the sale and purchase agreement. Law Number 1 of 2011 concerning Housing and Settlement Areas in article 134 also states that every person is prohibited from organizing housing development, who does not build housing in accordance with the agreed criteria, specifications, requirements, infrastructure, facilities, and public utilities (Kawasan, 2011).

Based on the background of the problems that have been described, the main problems in this paper are as follows: 1) how the agreement in the sale can protect consumers from developer default, and 2) how consumer protection in the application of legal decisions against consumer default lawsuits. The objectives to be achieved in this writing are as follows: 1) analyzing the agreement in the sale can protect consumers from developer default, and analyzing consumer protection in legal decisions against consumer default lawsuits.

RESEARCH METHODS

This method is used to analyze and understand legal norms related to consumer protection in the context of sharia housing purchase and sale agreements. This research will explore the provisions contained in Law Number 8 of 1999 concerning Consumer Protection and Law Number 1 of 2011 concerning Housing and Residential Areas.

Conduct an analysis of the contents of the binding sale and purchase agreement (Akad Istishna) and the credit and installment agreement (Al-Bay' Bi Ad-Dayn Wa Bi At-Taqsith) to identify the rights and obligations owned by consumers and developers. The main focus is on clauses relating to consumer protection against default.

Using a case study from PT Fimadani Graha Mandiri (FGM) as a concrete example to explore how existing agreements are applied in practice. An evaluation will be carried out on cases of default that occur and legal responses taken by consumers.

Analyze relevant legal decisions as a reference to understand how the courts provide protection to consumers in default cases. This includes reviewing the decision from the Bekasi City Religious Court related to the default lawsuit. Qualitative methods will be used to explore the views of consumers and developers regarding the protections that exist in agreements, while quantitative methods may involve collecting statistical data on cases of default and their resolutions.

Conduct interviews with relevant parties, such as consumers, developers, and legal experts to get a more in-depth perspective on consumer protection in agreements. Surveys can also be conducted to collect data from consumers regarding their experience in housing transactions. Analyze consumer protections

in sharia agreements compared to conventional agreement systems to identify the advantages and disadvantages of each.

RESULT AND DISCUSSION

Consumer Protection in Binding Sale and Purchase Agreements.

The Sale and Purchase Binding Agreement used between the developer and the consumer is using the istihna contract. This agreement is outlined and carried out according to the rules of Islamic sharia law, namely the Istishna rule. The istishna rule used is a form of buying and selling that is allowed by law, not using goods for some time. The istishna contract is a type of contract in the sharia economy that is used to regulate the transaction of buying and selling objects that do not yet exist or have not been formed, in which case the house being sold and sold does not have a form. In this istishna contract, the developer agrees to make or produce a house according to the specifications agreed with the consumer, so that this contract has a distinctive characteristic, namely a buying and selling transaction that involves the manufacture or production of goods according to the order.

Consumer protection against the fulfillment of rights granted by developers to consumers listed in the sale and purchase agreement (Akad Istishna) is: First, consumer protection of the right to receive correct information. Consumers have the right to know all information related to the shape of the house they are going to buy, so housing developers are prohibited from covering or reducing information related to the shape of the house and its quality. If there is a deficiency in the quality of the house, the developer is obliged to provide information to consumers. Consumer protection prohibits housing developers from trading housing that is not in accordance with the promises stated in housing advertisements or promotions that have been conveyed to consumers. The discrepancy between the housing specifications received by consumers and the form of the house in the offer and agreement is a form of violation for housing developers in selling their houses. Second, consumer protection in choosing goods according to the desires desired by consumers. Consumers have the right to submit layout proposals and change plans since the beginning of residential construction is implemented, as long as they do not change the budget plan. This consumer protection is intended so that consumers can determine their desire for the form of housing they will buy. The initial plan and layout agreed upon between the consumer and the developer can be used as a standard quality standard that must be met by the developer. Third, consumer protection to get compensation and compensation if the agreed specifications are not in accordance with the agreement in the agreement. Consumers are entitled to compensation or compensation for losses they receive from developers in a housing purchase transaction carried out. When there is no match in the image or quality, consumers also have the right to make demands against housing developers. Consumers must be protected from developers who violate the agreement by providing housing that is not in accordance with the agreement or damages occur. Fourth, consumer protection to receive housing perfectly. Consumers are entitled to receive land and buildings equipped with a certificate of ownership in the name of the buyer, a permit to erect a building in the name of the buyer, income tax on

land and buildings, installation of electrical installations and electrical networks, installation of clean water installations, fees included for the preparation of deeds of sale and purchase of land and buildings in the presence of the local Land Deed Making Officer (PPAT), and including the cost of value-added tax (VAT) and buyer's tax in the form of rights acquisition duties on land and buildings for the process of signing the Sale and Purchase Deed in front of the local PPAT. Fifth, consumer protection of their right to be served or treated correctly, honestly and non-discriminatory. Developers must treat consumers like guests who must be well served. The developer's treatment of each consumer must have the same standards. Developers must not discriminate between consumers in services and are stated in the agreement.

Based on the principles of consumer protection stated in the sale and purchase agreement (Akad Istishna) are as follows: First, the principle of responsibility if there is negligence or mistake made by the developer. Based on this principle, the developer's negligence that results in losses felt by consumers will be used as a determining factor in the existence of the consumer's right to file a lawsuit for compensation against the developer. A consumer lawsuit can only be made if it has fulfilled the elements of negligence and error and the contractual relationship between the producer and the consumer. Consumers have the right to receive the promised house, but if there is negligence that occurs, the consumer becomes uncertain about wanting to ask for compensation. Second, the principle of developer responsibility in the event of default. Responsibility based on the guarantee of home yield written in the agreement. The developer's responsibility must be given to the consumer in the event of a default contained in the words or agreement, which is a statement made by the developer in the form of a promise that binds the developer to fulfill it. Consumers can refuse to accept the house and ask the developer to hand over the goods according to specifications, and give the developer an additional tempo. The developer has a responsibility based on the agreement as a civil liability on the basis of an agreement or contract from the business actor for the loss experienced by consumers due to the act of using the goods and/or services produced or utilizing the services provided by the business actor, in this case the housing developer. In this case, the consumer must not continue to receive the goods and is entitled to request financial compensation for the non-conformity of the goods handed over. If there is a default by the developer, then the consumer has the right to ask for compensation, and if the compensation is still not given, then the consumer can bring it to a third party, and third, the principle of absolute responsibility of the developer. This principle has the basis that consumers cannot do much to protect themselves from the risk of loss caused by defective products, therefore the application of this principle, developers are absolutely obliged to provide protection for consumers. Consumers are not burdened to prove the developer's fault due to an absolute error that has already occurred, for example, the promised house does not exist or the house collapses within the warranty grace period. Consumers can request the cancellation of the home purchase agreement accompanied by a refund without compensation or in other words reversed one hundred percent absolute to the consumer. The consumer has the right to reject the house and ask for a refund of the price paid and cancel the purchase.

Consumer Protection in Credit and Installment Agreements (Al Bay Bi AdDayn Wa Bi At Taqsith).

The developer and the consumer agree that the payment method is through credit and installments or Al Bay Bi AdDayn Wa Bi At Taqsith. Buying and selling on credit and in installments is carried out in accordance with the rules of Islamic sharia law. An agreement based on Al Bay (buying and selling) is linguistically interpreted as an absolute exchange and the exchange of property for property in the form of a full exchange of ownership based on mutual consent. Al Bay Bi AdDayn or buying and selling on credit is selling something at a price paid after a certain clear tempo. Prices can be paid in one lump sum or after a certain tempo. Al Bay Bi AdDayn Wa Bi At Taqsith must meet the requirements for this credit agreement and installment to be a legitimate transaction process. The legal conditions for this agreement are the existence of both parties who carry out the agreement, the existence of an agreement stated in the agreement, and the existence of goods to be sold, which in this case is a house.

Consumer protection against the fulfillment of rights granted by developers to consumers listed in credit and installment agreements (Al Bay' Bi Ad Dayn Wa Bi At-Taqsith) is as follows: First, consumer protection of the right to receive correct information. The developer is required to hand over the goods with the terms agreed in the agreement. The goods must be able to be used by consumers and the goods must belong to the seller perfectly. The house must be able to be handed over by the housing developer in its entirety, must be clear in shape and handed over by the developer in accordance with the handover provisions. Second, consumer protection in choosing goods according to the desires desired by consumers. Developers and consumers must agree on the specifications of the house regarding location drawings. Consumers also receive Ownership Certificates, Building Permits, Income Tax on Land and Buildings, Sale and Purchase Deeds, Value Added Tax and Buyer Tax, installation of electrical installations and installation of clean water installations. Consumers are entitled to receive a certificate of ownership after the land and/or building is registered in the name of the buyer. Third, consumer protection to get compensation and compensation if the agreed specifications are not in accordance with the agreement in the agreement. The developer is required to hand over the goods with the terms agreed in the agreement. The goods must be able to be used by consumers and the goods must belong to the seller perfectly. The house must be able to be handed over by the housing developer in its entirety, must be clear in shape and handed over by the developer in accordance with the handover provisions. Fourth, consumer protection to receive housing perfectly. The Consumer has the right to receive the goods perfectly, which means that the ownership of the goods must be perfectly transferred to the buyer. The Consumer has the right to receive land and/or buildings that have been agreed upon and signed so that they are perfectly bound. If the buyer finds that the goods are less than what has been described or specifications, then the buyer has the right to request the goods back according to the agreed specifications. Fifth, Protection of their right to be served or treated correctly, honestly and non-discriminatory regarding the developer's obligations to the agreed norms. Developers are obliged

to submit and obey the norms in the agreement. A good developer must abide by the norms that apply in the agreement. The developer is obliged to determine the amount and amount of installments agreed upon by the buyer. The obligation to determine the amount and amount of installments is in the hands of the developer, but the amount of these installments must be clearly informed to consumers from the beginning in making an agreement. If the installment amount is not notified from the beginning, then the consumer has the right to refuse the installment amount if he finds out later.

Based on the principles of consumer protection stated in the credit and installment agreement (Al Bay' Bi Ad Dayn Wa Bi At-Taqsith) are as follows: First, the principle of responsibility if there is negligence or mistake made by the developer. Based on this principle, the developer's negligence that results in losses felt by consumers will be used as a determining factor in the existence of the consumer's right to file a lawsuit for compensation against the developer. A consumer lawsuit can only be made if it has fulfilled the elements of negligence and error and the contractual relationship between the producer and the consumer. Consumers can choose between forwarding or canceling transactions according to the predetermined time limit. Consumers have the right to receive the promised house, but if there is negligence that occurs, the consumer becomes uncertain whether to ask for compensation or not. Second, the principle of developer responsibility in the event of default. Responsibility based on the guarantee of home yield written in the agreement. After the specified day arrives, then the buying and selling must be ascertained whether to continue or not if negligence occurs. Default occurs if there is a disgrace or defect that reduces the quality of the house, and Third, the principle of absolute responsibility of the developer. This principle has the basis that consumers cannot do much to protect themselves from the risk of loss caused by defective products, therefore the application of this principle, developers are absolutely obliged to provide protection for consumers. If the consumer finds a defect after the handover, they can return it and ask the developer for a full price refund. Consumers should not keep the defective house and ask the developer for compensation for the value of the defect or disgrace.

Default by the Housing Developer that occurs in the Agreement.

An agreement can be carried out well if the parties have fulfilled their respective achievements as agreed without any party being harmed. However, sometimes the agreement is not implemented properly due to a default committed by one of the parties. Default is a situation that is due to negligence or fault, so that the debtor cannot fulfill the performance as specified in the agreement and not in compelling circumstances. If the debtor does not fulfill his obligations or is late in fulfilling them but not as agreed, then the debtor can be categorized as negligent. The fulfillment of the rights of the parties is a parameter for default, especially the non-fulfillment of the rights of the buyer. Consumer rights that are neglected in the Sale and Purchase Agreement and Credit and Installment Agreement between PT FGM and the consumer are parameters for the occurrence of default.

The defaults committed by the developer in the binding sale and purchase agreement and the credit and installment agreement are as follows: First, the

discrepancy promised by the seller with the reality accepted by the consumer, namely the house according to the specifications promised in the agreement cannot be realized by the seller. The seller's main obligation is to hand over the goods and bear them. What is meant by bearing here is the seller's obligation to bear or guarantee enjoyment, peace and bear or guarantee a sense of security. In this case, it is the completion of housing development according to the specifications of the agreement. Second, consumers wait for the house to be finished for a long time or in this case the manufacturing deadline that changes according to the seller's wishes. A housing developer who is late or late in building a house as agreed can be said to have broken the promise as stipulated in Article 1238 of the Civil Code which reads: "The debtor is negligent, if he by a warrant or a similar deed has been declared negligent, or for the sake of his own bond, is if this stipulates that the debtor must be considered negligent with the passage of the specified time." (Wetboek, n.d.) Third, the land promised to the buyer has not been fully owned by the seller, so the buyer cannot get the land even if the house is not built. The Certificate of Ownership and the Deed of Sale and Purchase cannot be given by the seller to the buyer because it is not fully owned by the seller. The problem of unpaid land from landowners to developers has a bad impact on consumers. The result of these problems is the cessation of development and the inability to issue land rights certificates that should be property rights from housing consumers. So that housing consumers who have paid in full the residential installments cannot enjoy the facilities promised by the developer, and cannot have a land rights certificate which is proof of legal certainty of ownership of residential land rights in the housing. Fourth, the fines promised in the agreement if there are delays or due dates for work are also not given by the developer to consumers. Even if the developer has defaulted, consumers have very difficulty getting the agreed compensation or fines.

Basically, when a housing developer has committed a default because it does not build a housing cluster according to the agreed time, then based on Article 1267 of the Civil Code, consumers can choose to: force the developer to continue to comply with the agreement; or demand the cancellation of the agreement, accompanied by reimbursement of losses and interest (KUHPperdata, n.d.-b). The respondent had initially made an effort to ask for legal protection by asking for accountability from the developer, but the answer from the developer only asked for patience and there was no certainty when it would be available. Housing developers make new agreements or addendums to respondents to request a delay in maturity. Respondents' complaints were delivered directly to developers without involving third parties, namely institutions formed by the government or non-governmental organizations that are concerned with protecting consumers. The seven respondents filed a civil lawsuit for PT Fimadani Graha Mandiri's default at the Bekasi City Religious Court by filing a simple lawsuit.

Effectiveness of Consumer Protection in Simple Lawsuit Decisions.

There are 2 (two) decisions resulting from a simple lawsuit filed by 7 (seven) respondents to the developer at the Bekasi Religious Court, namely the lawsuit decision and the decision through peace (Al Hakim, 2014). Consumer protection against the fulfillment of rights granted by developers to consumers listed in 3

(three) lawsuit decisions is as follows: First, consumer protection in choosing goods according to the desires desired by consumers. That the fact that the plaintiffs (consumers) stated that the plaintiffs (developers) could not carry out the contents of the agreement can be granted, because it is in accordance with the legal principle of 'pacta sunt servanda' contained in the provisions of Article 1338 of the Civil Code jo Article 44 of the Compilation of Sharia Economic Law and Jurisprudence of the Supreme Court Number 791K/Sip/1992 (KUHPerdata, n.d.-c). This shows that the decision of a simple lawsuit protects consumers to get their right to get a house that suits their wishes. Second, consumer protection to get compensation and compensation if the agreed specifications are not in accordance with the agreement in the agreement. Based on the existing facts, the plaintiffs (consumers) have suffered losses as a result of the defendants (developers) have committed defaults, so in accordance with Article 38 letter a of the Compilation of Sharia Economic Law and Fatwa of the National Sharia Council Number: 43/DSN-MUI/VIII/2004 concerning compensation (Ta'widh) so that the plaintiffs' (consumers) lawsuit for the developer to return the payment that has been paid by the plaintiffs (consumers) can be granted. Because the plaintiffs' (consumers) lawsuit was granted, based on article 181 paragraph (1) of the HIR, jo Article 38 of the Compilation of Sharia Economic Law, the decision punished the developer to pay the cost of the case. The Panel of Judges decided to win the consumer verstek because the defendants (developers) had been properly summoned but were not present. PT FGM (developer) must return the amount of money that has been paid by the plaintiff accompanied by paying compensation (ta'widh) to the plaintiffs. The decision is appropriate to provide a decision that protects consumers, where when a default occurs, the consumer is entitled to compensation, and third, consumer protection to receive housing perfectly. Consumer protection listed in the judges' consideration stated that the developer had defaulted on the Sale and Purchase Agreement (Akad Istishna), and the Sale and Purchase Agreement on Credit and Installment (Al-Bay' Bi Ad-Dayn Wa Bi At-Taqsith), in accordance with the consideration of Article 36 of the Compilation of Sharia Economic Law. This means that consumers' demands to get the perfect house are protected by the panel of judges, because the panel of judges has considered that the developer has violated the agreement.

Consumer protection against the fulfillment of rights granted by developers to consumers listed in 2 (two) peace decisions are as follows: First, consumer protection in choosing goods according to the consumer's wishes. In peace, it was agreed that the first party (consumer) filed a lawsuit over the request for a refund of the installment DP and compensation as well as fines that had been paid to the developer (second party) at the Bekasi Religious Court as a legal remedy to restore his rights due to default, and Second, consumer protection to get compensation and compensation if the agreed specifications were not in accordance with the agreement in the first and second parties (consumers) (The developer) has agreed to resolve the problem and end the legal problem to obtain the best solution by peaceful way with the refund of the money paid and compensation.

The consumer as a person who is violated due to default demands compensation for the losses suffered by giving advance notice or summons. The summons has been made as a prior notice to the developer of his negligence or

default. However, after the summons was made, the developer was not able to fulfill the agreement that had been contained in the agreement. Article 1243 of the Civil Code explains that reimbursement of costs, losses and interest due to the non-fulfillment of an agreement is only required if the debtor, after being declared negligent in fulfilling his agreement, continues to neglect it, or something that must be given or made, can only be given or made within the time limit that has been exceeded (KUHPerdata, n.d.-a). So the basis of the lawsuit filed by the plaintiff is very clear as an effort to protect the law to avoid default committed by the developer.

Basically, court decisions through simple lawsuits, both lawsuit decisions and peace decisions, have reflected legal protection for consumers (Ali & SH, 2022). However, it has not been able to solve the problem of defaults committed by developers to consumers. The judge found it difficult to determine the seizure of collateral to provide consumer protection because the land assets sold by the developer to the consumer did not belong to the developer. The developer does not provide honest and correct information to consumers in the agreement regarding the status of land ownership. Familial dispute settlement by means of peaceful dispute settlement carried out by 2 (two) plaintiff consumers in court is an easy, cheap and faster form of settlement in accordance with articles 1851-1854 of the Civil Code concerning peace (KUHPerdata, n.d.-d). The settlement decision provides stronger legal protection for consumers. The peace decision for both respondents could go well because at that time the developer still had the ability to refund the money that had been paid by the consumer. However, for the five respondents who filed a lawsuit, the payment of compensation could not be fulfilled because the developer no longer had the ability to pay.

CONCLUSION

The conclusion of this writing is First, the two agreements, namely the Binding Agreement for Sale and Purchase (Akad Istishna) and the Agreement for Sale and Purchase on Credit and Installment (Al-Bay' Bi Ad-Dayn Wa Bi At-Taqsith) have reflected the fulfillment of consumer protection for the rights that must be given to consumers. In addition, both agreements have also reflected the principles of consumer protection, but in their implementation there has been a default, and Second, the effectiveness of consumer protection in the lawsuit decision is still not maximized even though the lawsuit decision has reflected consumer protection by winning the consumer as the plaintiff. Compensation and refunds were not given by PT FGM on the grounds that there was no longer any money and assets of the company. Consumers also cannot apply for execution because they cannot ensure the assets owned by PT FGM so that they cannot allow the judge to confiscate bail.

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