

## E-COMMERCE CONSUMER PROTECTION At TOKOPEDIA

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### **Abstract**

*This study aims to determine and understand the legal principles in protecting the rights of e-commerce consumers who transact on Tokopedia. This research is library research (library research) with a normative approach because it is a research that analyzes written regulations related to consumer protection in conducting electronic transactions on Tokopedia. The data source is secondary data in documents, reports, books, and other publications that support this research. The results show that e-commerce consumers transact on Tokopedia are in a weak position that can experience fraud from business actors who open stalls on the Tokopedia site. In protecting and safeguarding consumer rights, Tokopedia must establish strict rules and procedures for business actors conducting business activities on Tokopedia based on Law No. 8 of 1999 concerning consumer protection, Law No. 11 of 2008 concerning Electronic Information and Transactions Government Regulations Number 82 of 2012 concerning Implementation of Electronic Systems and Transactions.*

**Keywords:** *Consumer Protection, e-Commerce.*

### **Abstrak**

*Penelitian ini bertujuan untuk mengetahui dan memahami asas hukum dalam melindungi hak-hak konsumen e-commerce yang bertransaksi di Tokopedia. Penelitian ini adalah penelitian kepustakaan (library research) dengan metode pendekatan normatif karena merupakan penelitian yang menganalisis peraturan-peraturan tertulis yang berkaitan dengan perlindungan konsumen dalam melakukan transaksi elektronik di Tokopedia. Sumber data adalah data sekunder yang berupa dokumen, laporan, buku, dan publikasi lainnya yang mendukung penelitian ini. Hasil penelitian menunjukkan konsumen e-commerce dalam bertransaksi di Tokopedia berada pada posisi lemah yang berpotensi mengalami kecurangan dari pelaku usaha yang membuka lapak pada situs Tokopedia. Dalam melindungi dan menjaga hak konsumen, Tokopedia harus membuat aturan dan prosedur yang ketat bagi pelaku usaha yang melakukan aktivitas bisnis di Tokopedia dengan berpedoman pada UU No 8 Tahun 1999 tentang perlindungan konsumen, Undang-Undang Nomor 11 Tahun 2008 Tentang Informasi dan Transaksi Elektronik Peraturan Pemerintah Nomor 82 Tahun 2012 Tentang Penyelenggaraan Sistem dan Transaksi Elektronik.*

**Kata Kunci:** *Perlindungan Konsumen, e-Commerce.*

## **INTRODUCTION**

Human life's history is closely related to the development of machines, equipment, or the history of technology and information transformation. Information technology has successfully led people to change in transaction activities and discover and create new business transaction opportunities. Also, advances in information technology have an impact on the world to be limitless and provide significant social change with a rapid development cycle. The progress of information technology that is felt and enjoyed by humanity today is a double-edged sword, because in addition to contributing to increasing prosperity, welfare, improvement in the civilization of human life, it is also a useful container and instrument for committing unconstitutional, immoral, non-humanistic, and against the law<sup>1</sup>.

In the future paradigm and forecast, the world will be transformed into a vast expanse that causes the boundaries between countries to become blurred. Furthermore, on the economic side, the development of the global economy follows its logical path.<sup>2</sup> In this process, the world is used to make awareness of the world's conditions as an undivided whole.<sup>3</sup> However, the process of globalization that has given birth to barrier-free information via the internet increased traffic of transactions for goods and services nationally and internationally. The opening of membership in various global organizations has the potential to generate logical consequences, namely instability, and inequality in social life and problems. - legal issues that have an impact on society, which is a must to be handled by legal experts.<sup>4</sup>

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<sup>1</sup> Ahmad M. Ramli, *Cyber Law Dan HAKI Dalam Sistem Hukum Indonesia* (Bandung: Refika Aditama, 2004). hlm.10.

<sup>2</sup> Muhammad Jehangir, "Towards Digital Economy : The Development of ICT and E-Commerce in Malaysia" 5, no. 2 (2011): 171–78, <https://doi.org/10.5539/mas.v5n2p171>.

<sup>3</sup> Lathifah Hanim, "Perlindungan Hukum Bagi Para Pihak Dalam E-Commerce Sebagai Akibat Dari Globalisasi Ekonomi.," *Jurnal Pembaharuan Hukum* 1, no. 2 (2014): 191, <https://doi.org/10.26532/jph.v1i2.1476>. hlm.192

<sup>4</sup> Heldya Natalia Simanullang, "Perlindungan Hukum Terhadap Konsumen Dalam Transaksi E-Commerce," *Journal of Chemical Information and Modeling* 53, no. 9 (2019): 1689–99, <https://doi.org/10.1017/CBO9781107415324.004>.

Various problems outside the provisions raised by information technology often occur in digital trading activities or often known as e-commerce<sup>5</sup>. The progress and convenience that e-commerce has created in digital-based economic activities bring every product from afar. Then it can be purchased by the public with just a few clicks from e-commerce consumers. This convenience increases the intensity of digital business activities<sup>6</sup>.

The provisions for E-commerce or digital-based transactions are contained in Law Number 11 of 2008 concerning Electronic Information and Transactions, which is clearly included in article 1 number 2. In article 17 paragraph 1 of the ITE Law that "Electronic transactions can be carried out within the public sphere or private"<sup>7</sup>. One of the sites or applications for online transactions is Tokopedia. Digital transaction activities that are carried out when using Tokopedia are an indirect electronic transaction category.

Tokopedia has succeeded in providing accessible services in making more practical business transactions without having to use paper. In transactions on Tokopedia, the principle is the same as electronic transactions that are generally accepted. Namely, parties can not meet directly to make transactions, so it can be said that Tokopedia is one of the startups that are the tools to drive the new economy in the field of digital technology. Apart from these advantages, there is a negative side generated by the development of electronic transactions, namely regarding the quality of security in conducting transactions using e-commerce media. The birth of activities that lead to law fraud in e-commerce media harms consumers and causes various legal problems in

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<sup>5</sup> Mohammad Ikbal, "ASPEK HUKUM PERLINDUNGAN KONSUMEN DALAM TRANSAKSI ELEKTRONIK (E-COMMERCE) MENGHADAPI MASYARAKAT EKONOMI ASEAN 2015," *Al Adl Jurnal Hukum* VII, no. 7 No 14 (2015): 1–27, <https://ojs.uniska-bjm.ac.id/index.php/aldli/article/view/223/216>. hlm 5.

<sup>6</sup> Abbad Muneer, Abbad Rami, and Saleh Malik, "Limitations of E-commerce in Developing Countries: Jordan Case," *Education, Business and Society: Contemporary Middle Eastern Issues* 4, no. 4 (January 1, 2011): 280–91, <https://doi.org/10.1108/17537981111190060>.

<sup>7</sup> Ambar Wariati and Nani Irma Susanti, "E-Commerce Dalam Perspektif Perlindungan Konsumen," *Jurnal Ekonomi & Bisnis. Edisi Nopember* 1, no. 2 (2014), <https://media.neliti.com/media/publications/162105-ID-none.pdf>.

conducting electronic transactions, without exception, these problems occur in Tokopedia.

The issue of fraud or fraud in conducting business transactions via e-commerce occurred in August 2018 on Tokopedia. The fast sales program or flash sale conducted by Tokopedia became a problem when a number of its employees committed fraud by detaining and buying 49 products that should have been offered to consumers. As a result of the actions of several Tokopedia employees, consumers have difficulty getting the products offered. Even though in this incident, Tokopedia fired several employees to protect consumers' interests by Law No. 8 of 1999 on consumer protection, consumer confidence still diminished because they felt disadvantaged and cheated in the flash sale program. Fraudulent acts committed by several Tokopedia employees violate legal provisions and can lead to penalties if consumers who feel disadvantaged take them to legal shutter.

In the last Tokopedia 2018 flash sale program, fraud could be subject to layered articles in Law Number 8 of 1999 concerning Consumer Protection. For example, in Article 12, business actors are prohibited from promoting certain goods at a specific price within a particular time and amount, if they do not intend to do so. Also, Article 9, paragraph 1 point a of the same law confirms that business actors who offer goods incorrectly as if the goods have a discount will be affected. Meanwhile, business actors who offer goods incorrectly, as if the goods are available but are not, will be subject to Article 9, paragraph 1 point e. Then business actors who sell products that are different from advertisements can be charged under Article 8 paragraph 1 point f. The same thing as selling defective products without notification, so that the work seems to be charged with article 8, paragraph 2. All suspected acts of fraud committed in the Tokopedia flash sale program in August 2018 could be charged with criminal sanctions by Article 62 with a maximum imprisonment of 5 years or a maximum fine of Rp. 2 billion<sup>8</sup>.

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<sup>8</sup> Desy Setyowati, "Kecurangan Dalam Flash Sale Tokopedia Bisa Dipidana," Katadata.co.id, August 28, 2018, <https://katadata.co.id/pingitaria/digital/5e9a55dc9f719/kecurangan-dalam-flash-sale-tokopedia-bisa-dipidana>.

The existence of fraud in the flash sale program in 2018 at Tokopedia encourages the author to conduct research related to consumer protection for e-commerce on Tokopedia, because in the future, it does not rule out actions that violate the law in transacting with e-commerce media either from the company or the seller and potential buyers will repeat themselves. This is due to the vague statutes and regulations relating to security guarantees between the two parties, the seller and the buyer. This security guarantee not only focuses on goods or services being transacted but also covers the security of consumer data who become users and is stored in the Tokopedia information technology system database. With the results of this research, later it can be used as a reference for researchers, governments, and the public who need information related to consumer protection for e-commerce on Tokopedia.

Topics related to consumer protection in transactions on e-commerce have been discussed through previous research. According to Barkatullah, researching the urgency of protecting consumer rights in e-commerce transactions found that when compared to the risks between consumers and business actors, consumers have a greater chance of making transactions in e-commerce than business actors. Due to the vulnerability of rights violations experienced by consumers, legal protection from the state for consumers is needed<sup>9</sup>.

Meanwhile, according to Priadi, who researched E-Commerce Supervision in the Trade Law and the Consumer Protection Act, he found that in e-commerce transactions, business actors have a responsibility aspect, in this case, the merchant. This aspect of responsibility applies if the goods purchased by consumers do not comply with the agreement. Also, as e-commerce transaction activities are proliferating, strict supervision is needed and inherent. Even though the implementation of the management of e-commerce transactions is not easy and runs smoothly compared to supervising

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<sup>9</sup> Halim Barkatullah, "Urgensi Perlindungan Hak-Hak Konsumen Dalam Transaksi Di E-Commerce," *Jurnal Hukum IUS QUIA IUSTUM* Vol 14, no. 2 (2007): 247–70, <https://doi.org/10.20885/iustum.vol14.iss2.art8>. hlm.250

conventional trade transactions, leadership in the scope of e-commerce is still multi-faceted.<sup>10</sup>

The use of the terms consumer law and consumer protection law are commonly used in business activities. However, each legal expert defines consumer protection so that it is still challenging to find a general-purpose related to digital consumer legal protection. Nasution, for example, defines consumer protection law as part of consumer law, which includes principles and rules that involve regulating principles and giving meaning to properties that protect security and protect the interests of consumers. With this definition, it can be said that consumer law includes all the principles and legal principles that maintain and regulate the relationships and problems of various parties with each other related to transactions of consumer goods and or services, in business activities both conventionally or in e-commerce based digital<sup>11</sup>.

If defined, consumers are "individuals or business groups who buy goods with certain specifications and use certain services"; they can also be interpreted as "a person or group that uses a supply or several goods and services."<sup>12</sup> There is also what defines "every individual and group that deliberately uses goods or services". The definition that has been explained shows a distinction between consumers as individuals or individuals and consumers as business actors or groups of legal entities. The existence of this distinction is essential to distinguish the purpose of purchasing goods, whether the consumer makes transactions for these goods for himself or is used for commercial purposes<sup>13</sup>.

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<sup>10</sup> Deky Paryadi, "Pengawasan e Commerce Dalam Undang-Undang Perdagangan Dan Undang-Undang Perlindungan Konsumen," *Jurnal Hukum & Pembangunan* 48, no. 3 (2018): 651–69, <https://doi.org/http://dx.doi.org/10.21143/jhp.vol48.no3.1750>. hlm. 62

<sup>11</sup> A.Z Nasution, *Konsumen Dan Hukum. Tinjauan Sosial, Ekonomi Dan Hukum Pada Perlindungan Konsumen Indonesia* (Jakarta: Pustaka Sinar Harapan, 1995). hlm 65-66

<sup>12</sup> Emad Abdel Rahim Dahiyat, "Consumer Protection in Electronic Commerce: Some Remarks on the Jordanian Electronic Transactions Law," *Journal of Consumer Policy* 34, no. 4 (2011): 423, <https://doi.org/10.1007/s10603-011-9170-9>.

<sup>13</sup> Arianto Mukti Wibowo Et.al, *Kerangka Hukum Digital Signature Dalam Electronic Commerce, Grup Riset Digital Security Dan Electronic Commerce* (Depok, Jawa Barat: Fakultas Hukum Ilmu Komputer UI, 1999).hlm.102

Hondius, as an expert on consumer problems in the Netherlands, put forward the conclusion that legal experts agree with the opinion that consumers are individuals or individuals who are the last users of goods and services. Referring to this definition, Hondius makes two group distinctions between consumers who are not previous users (intermediate consumers) and the last user (end-user). The development of doctrine and jurisprudence developed in France defines consumers as "The person who obtains goods or services for personal or family purposes." This definition contains two meanings, and namely, first, consumers are only private, and secondly, goods or services are used for personal or group purposes. However, the importance of the word "to obtain" still requires further explanation and enlightenment<sup>14</sup>.

## **METHOD**

This research is a type of literature research (library research), that is, by checking useful documents that are officially published or those found throughout the printed material, or in shape electronic. The research development used is descriptive method. The author carries out a correct and appropriate analysis to find data in legislation and literature that has a relationship with the problems that the author is researching.

The type of data used is secondary data, where the data obtained from sources whose data characteristics have been documented by other parties. The data collection of this research uses the documentation method, namely the collection of documents carried out by selecting data from writings and determining which data is considered operationally representative.

This research uses qualitative analysis techniques by determining the relationship between parts and all of the data collected through a systematic process to produce a classification or typology. Data analysis starts with the data collection stage to the stage report writing. Qualitative research is also called continuous analysis.<sup>15</sup>

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<sup>14</sup> Shidarta, *Hukum Perlindungan Konsumen Indonesia*, Revisi (Jakarta: Grasindo, 2004).hlm 5

<sup>15</sup> Afrizal, *Metode Penelitian Kualitatif* (Jakarta: Raja Grafindo Persada, 2015).hlm 176

## **PROBLEMS AND POTENTIAL RISKS EXPERIENCED BY E-COMMERCE CONSUMERS IN TRANSACTIONS ON TOKOPEDIA**

Legal protection is practically oriented to carry out regular functions in realizing legal principles, namely the principle of justice, the focus of benefit, and legal certainty. Legal protection can be classified into two forms: preventive, a form of prevention, and repressive, which is a form of resolution. The form of preventive legal protection is related to the inclusion of standard clauses by business actors to take precautions so that consumers whose existence is in a weak condition do not experience losses from clauses made by business actors or business activists.<sup>16</sup>

It is the right of consumers to get protection, and this is clearly stated in article 1 of the consumer protection law No. 8 of 1999, which says that consumer protection is an effort that ensures legal certainty to protect consumers. Thus, matters relating to making standard clauses by business actors on the Tokopedia online buying and selling site can cause consumer losses, both material and non-material, consumers have protection and legal certainty.

With regard to legal protection for consumer rights in cyberspace, along with the rapid development of e-commerce, it hurts consumers, which puts the consumer's position in a weak position and is at risk of experiencing losses. Consumers also experienced this problem with Tokopedia. The existence of fraud from the flash sale program carried out by internal parties at Tokopedia proves that consumers are in a weak position and will bear the risk of loss in the future. In general, consumers will face problems related to fulfilling consumer rights in transactions on Tokopedia, including:

1. Consumers experience assessing, seeing, feeling, touching the goods to be ordered;
2. Consumers find unclear information related to the products advertised and offered, in addition to a certainty whether consumers will have clear and worthy information cannot be ascertained so that consumers have difficulty making transactions;
3. The legal subject of business actors is unclear;

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<sup>16</sup> Rizka Syafriana, "Perlindungan Konsumen Dalam Transaksi Elektronik," *DE LEGA LATA: Jurnal Ilmu Hukum* I (2017): 430–47, <https://doi.org/https://doi.org/10.30596/dll.v1i2.803.hlm> 435

4. Consumers do not get a guarantee or security guarantee either when transacting or data privacy security. Also, an explanation of the risks that arise in using systems such as electronic payment systems, both by credit card, transfer, and a debit card;
5. Potential risks that will be experienced are not balanced due to general buying and selling transactions on the internet, consumers making payments in full in advance, but there is no guarantee that the goods ordered will be accepted or not because the contract is that the warranty is only limited to the security of delivery of goods, not guarantee goods receipt;

The relationship between Tokopedia and sellers who open stalls on Tokopedia is an E-commerce service, or it is termed a market place. Tokopedia, which has opened, is offered directly to consumers through [www.tokopedia.com](http://www.tokopedia.com), which can easily be accessed by internet users. Tokopedia must advertise products that have been provided by users into existing services through the available Tokopedia website pages. Also, Tokopedia is obliged to provide users with a sense of security when selling on Tokopedia.

With regard to obligations, Tokopedia has the right to reprimand and close the tenant's stalls if they do not carry out their duties, besides that, Tokopedia also has the right to give a warning to the Seller if the activities carried out are not by the regulations. As in many cases, sellers are mostly duplicating products, offering consumers goods that do not fit real conditions. This action is against laws and regulations. Article 1458 of the Civil Code explains that the Seller must declare the goods' condition to be traded.

The same problem applies to sales through the Tokopedia site. Sellers and Tokopedia must clearly state the information and rules that already exist in the items to be sold. In this case, the Seller cannot enter into an agreement that violates the applicable laws and regulations. After the consumer makes a payment according to the price and goods that he wants, the Seller also must make delivery and delivery of the goods he has sold to the buyer. In business ethics, the Seller bears and guarantees the goods he sells. The Seller must comply with all the rules made by Tokopedia, namely that the Seller is prohibited from selling goods that cannot be bought and sold according to the applicable laws and regulations.

## **CONSUMER LEGAL PROTECTION IN MAKING TRANSACTIONS ON TOKOPEDIA**

In the modern business paradigm, the principles of fulfilling rights and implementing obligations must be considered by companies. Fulfillment of consumer rights has an impact on consumer behavior and corporate image, which, of course, will further increase company profits. The conception of fulfilling consumer rights is protecting consumers' interests that have been determined in statutory regulations or better known as consumer protection. Universal consumer protection is closely related to consumer recognition efforts, expressed in clear and systematic rules. Although the approaches used in defining consumer rights vary, in broad outline, consumer rights can be grouped into three fundamental principle rights, namely:<sup>17</sup>

1. Rights intended to protect consumers from loss, either personal loss or property loss;
2. Rights designated to ensure consumers obtain goods and services at a fair price; and,
3. Protected rights to bring clarity and proper resolution of problems faced by consumers.

Consumer rights described in principle must be fulfilled, either by the state or companies and business actors. Tokopedia, as part of the business actors engaged in e-commerce, must implement consumer protection for consumer rights because fulfilling Tokopedia's consumer rights will prevent consumers from losing various aspects. To fulfill consumer rights, Tokopedia must refer to article 4 of Law No.8 of 1999, namely:<sup>18</sup>

- a. The right to obtain comfort and safety in terms of consumer goods and services.
- b. The right to choose goods and services and obtain these goods and services according to the exchange rates and conditions and guarantees promised.

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<sup>17</sup> Shidarta, *Hukum Perlindungan Konsumen Indonesia* (Jakarta: Gramedia Widiasarana, 2006).hlm 30.

<sup>18</sup> Abi Robian, "FUNGSI PERLINDUNGAN KONSUMEN ATAS PENGGUNAAN KLAUSULA BAKU DI INDONESIA MENGACU PADA UNDANG- UNDANG NO . 8 TAHUN 1999 TENTANG PERLINDUNGAN KONSUMEN," *Jurnal Pendidikan Kewarganegaraan* 4, no. 1 (2018): 23–36, <https://doi.org/http://dx.doi.org/10.32493/jpkn.v4i1.y2017.p23-36>. hlm 27.

- c. The right to obtain and obtain access to correct, transparent, and honest information regarding the condition and guarantee of goods and/or services.
- d. The right to get a response to complaints about the goods and services used.
- e. The right to obtain protection advocacy and efforts to resolve consumer protection disputes appropriately.
- f. The right to obtain consumer guidance and education.
- g. The right to be treated and/or served correctly and honestly and without discrimination.
- h. Hak untuk mendapatkan kompensasi ganti rugi atau penggantian, apabila barang dan/atau jasa yang diterima tidak sesuai dengan perjanjian atau tidak sebagaimana mestinya.
- i. Rights regulated in other laws and regulations In addition to the rights regulated in Article 4, there are also consumer rights mandated in Article 7, which contain business actors and companies' obligations that can be seen as rights that consumers must obtain.

Consumers as buyers also have Buyer obligations in article 1515 of the Civil Code states that the obligations that consumers must fulfill are consumers who order goods are required to make payments.<sup>19</sup> In transactions on Tokopedia, payments made by consumers must be made immediately with a time limit of 2 days after the goods transacted by consumers have checked out status. The right of consumers is to receive goods that have been purchased according to the promised time. After the Buyer makes a payment through an account with Tokopedia, the Seller will send the goods that have been purchased by the Buyer. The delivery period for the goods is between two and seven days, depending on the expedition. Buyers are required to confirm receipt of goods after receiving the goods purchased.

In conducting the payment process, the Buyer is given no later than two days to make payment for goods that have been checked out. If within the given time limit,

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<sup>19</sup> Hulman Panjaitan, "PEMBERLAKUAN PERJANJIAN BAKU DAN PERLINDUNGAN TERHADAP KONSUMEN," *Jurnal Hukum To-Ra* 2, no. 1 (2016): 261–67, <https://doi.org/https://doi.org/10.33541/tora.v2i1.1126>. hlm 264.

Tokopedia has the authority to cancel the transaction that has been made by the Buyer. The Buyer is not entitled to submit claims for transaction cancellations that have been made by Tokopedia. Also, Tokopedia can provide accurate shipping rate information to buyers based on location, but Tokopedia is not able to guarantee the accuracy of the data with those in the local area or branch.

With the construction of a legal relationship when doing Tokopedia transactions provide clarity on the subject, object, and rights and obligations of the parties. This has resulted in an agreement between all parties conducting transactions on Tokopedia. The deal is the lease agreement made by Tokopedia with the Seller, the Sale and Purchase Agreement made by the Seller and the Buyer, and the Authorization Agreement made by the Buyer with Tokopedia.

## **CONCLUSION**

Consumer protection aims to ensure legal certainty for consumers who feel disadvantaged so that the security of consumer rights can be realized. In e-commerce transactions like what happened in Tokopedia, consumers' position is weak, and consumer rights are precarious. Normatively, consumer rights have been regulated in the Consumer Protection Act, Law No. 8/1999, on consumer protection, but this law seems unable to cover all business activities electronically. Also, the security that is carried out on e-commerce consumers only covers the consumer side and the side of the products traded on Tokopedia, while the protection to obtain information such as the identity of the business actors and the guarantee of confidentiality of consumer data has not been accommodated, even though these rights are essential. To provide security for consumers in transactions.

Thus, not only Law No. 8 of 1999 on consumer protection is used as a reference by Tokopedia in safeguarding consumer rights, but must be supported by Law Number 11 of 2008 concerning Electronic Information and Transactions Government Regulation Number 82 of 2012 concerning Implementation of Systems and Electronic Transactions, as well as other regulations that can provide convenience and security for consumers in making transactions on Tokopedia.

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