

*Research Article*

## The Policy and Supervision by Government of Circulation Alcoholic Beverages in East Java, Indonesia

Rr. Herini Siti Aisyah<sup>1</sup>, Heru Irianto<sup>2\*</sup>, M Saleh<sup>1</sup>, Tatiek Djatmiati<sup>1</sup> and Minola Sebayang<sup>1</sup>

<sup>1</sup>Faculty of Law, Airlangga University, Indonesia

<sup>2</sup>Bhayangkara University, Indonesia

Address correspondence to Heru Irianto, heru@ubhara.ac.id

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### Abstract

This paper aims to explain the policy of the East Java Province government in controlling and supervising the circulation of alcoholic beverages. The method of this study conducted with literature, statute, and court decision review. The results found in the policy of control and supervision of the circulation of beverages are carried out through licensing instruments for retailers and providing recommendations for distributors and distribution of circulars on every domestic product distributed by distributors, sub-distributors, retailers and sellers directly. Anyone who violates licensing provisions that may be subject to criminal prohibitions. This paper concludes that the licensing policies, giving recommendations, and circulating business cards in the United States as regulated in legislation.

**Keywords:** policy, circulation, alcoholic beverages, government

### 1. Introduction

East Java Province is one region that has autonomous rights to regulate and manage peace, public order and protection of the community as referred to in Article 12 paragraph (1) letter e of Law Number 23 Year 2014 concerning Regional Government.

Alcoholic liquor is something that is needed by the world community both in customs, culture and hobbies. in this context alcoholic drinks are a requirement depending on the segment. see the context of Indonesian society, especially East Java is a community that has a habit of consuming these drinks. besides that the province of East Java is the traffic of the circulation of these drinks to various places in the country of Indonesia. for that East Java has a special concentration to examine more deeply the circulation of this liquor in terms of regulations and applicable laws.

Therefore, the Regional Government of East Java Province should have formed a Regional Regulation to control and supervise the circulation of alcoholic

beverages, because this would harm the people of East Java. At the end of 2013 until the beginning of 2014, the impact of misuse of alcoholic beverages in East Java became a national issue. National Media, as well as local media, are busy reporting various events that have arisen as a result of misuse of alcoholic beverages in East Java-based on data East Java Police stated that during the period September 2013 until early January 2014, the impact of the abuse of alcohol beverages has killed 34 (thirty-four) [1]. The death toll did not include the number of victims who had to hospitalized. The East Java Regional Police has formed a Special Team to handle cases of abuse of alcoholic beverages.

Various events that emerged as a result of the misuse of alcoholic beverages have disrupted public order and peace of the people in East Java. If the Regional Government of East Java Province does not immediately formulate in a policy of overcoming and controlling the circulation of alcoholic beverages, then the potential for disruption of public order and the peace of the people of East Java will be even more significant. Also, the abuse of alcoholic beverages will harm health because they contain substances that are harmful to human health.

Based on a bag the problems mentioned above, the East Java Provincial Government has enacted the East Java Provincial Regulation No. 6 of 2014 on Control and Control of Alcoholic Beverages which passed on July 22, 2014. To implement this provision, the East Java Provincial Government has also adopted the Governor of East Java Province Regulation No. 66 of 2018 concerning the Regulation of the Implementation of East Java Provincial Regulation Number 6 of 2014 concerning Control and Supervision of Circulation of Alcoholic Beverages, promulgated on 31 July 2018.

## 2. Method

In this study, the type of research used is a type of normative analysis. The normative analysis examines the provisions of positive law and legal principles by systematically explaining legal rules in a particular legal category, analyzing the relationship between legal requirements, explaining and predicting future legal developments [2].

According to Terry Hutchinson, this research belongs to the *doctrinal research* category, namely juridical (*technicsjuridich*), philosophy, principle and at the level of legal theory *research which provides a systematic exposition of governing rules a particular legal category, analyzing the relationship between regulations, explains areas of difficulty and, perhaps, predicts future development* [3]. This research focused on the level of eternal law and legal theory. Assessment of legal principles and the first step is done by assessing the literature study (*library research*) and also survey the doctrine of developing which collect legal materials. Terry Hutchinson [4] by selecting *Issue of Law*, determining relevant statutory regulations (*Rule of Law*) and then analyzing facts from the legal aspect (*Analyzing the effects*; which results in the preparation of a conclusion (*Conclusion*). All materials sought its relationship between one another using deductive and inductive reasoning to produce propositions and concepts in the form of definitions, descriptions, or classifications as a result of research. The next step is to review and analyze the legal principles that are authorized agencies to avoid conflicts of authority in the supervision of circulation of alcoholic beverages to prevent deviations and guaranteed legal certainty. And the last step describe and analyzed to find the surveillance system to overcome the existing problems to improve the effectiveness, efficiency, and accountability in the Control of Alcoholic Beverages to avoid the occurrence of irregularities circulation alcoholic beverages

## 3. Discussion

Development of Regulations on Alcoholic Beverages in Indonesia Initially the policy of controlling and controlling alcoholic beverages in Indonesia was regulated by Presidential Decree No. 3 of 1997 concerning Control and Supervision of Alcoholic Beverages. However, on June 18, 2013, the Supreme Court issued a Decision in Case Number 42 P/HUM/2012 which cancelled the Presidential Decree Number 3 of 1997 because it contravened Law Number 36 of 2009 concerning Health, Law Number 8 of 1999 concerning Protection Consumer, and Law Number 7 of 1996 concerning Food. Therefore, the Presidential Decree No. 3 of 1997 was declared invalid and had no legal force.

To maintain public order and public order, the Supreme Court ordered that the Government and the Regional Government immediately form legislation to control and supervise alcoholic beverages. It is as stated in the Supreme Court Ruling on page 55 that:

*Government should or the Regional Government immediately issues legislation regulate the control and supervision of alcoholic beverages, with consider efforts to maintain order and peace of society, improve health status for the community as a health effort integrated and comprehensive and in an effort to provide safe, quality food nutritious as a prerequisite for organizing a food system that provides health protection for the community and also must pay attention to values religion, cultural customs, local wisdom values and the culture of the Indonesian people the noble one.*

To carry out the Supreme Court's order above, the President of the Republic of Indonesia then enacted Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages. In the consideration of letter a of the Presidential Regulation Number 74 of 2013, it is stated that the purpose of regulating the control and supervision of the procurement, circulation, and sale of alcoholic beverages is "to provide protection and maintain health, order, and peace of the people from the adverse effects on alcoholic beverages abuse". Published of Presidential Regulation Number 74 of 2013 raises legal problems because the Presidential Regulation Number 74 of 2013 cannot regulate criminal sanctions against perpetrators of alcoholic drinks.

Based on Article 15 paragraph (1) of Law Number 12 the Year 2011 concerning the Establishment of Legislation Regulations, it stated that the contents concerning criminal provisions could only contain in-laws, Provincial Regulations and District/City Regulations. Thus, the existence of a Presidential Regulation concerning the control and supervision of alcoholic beverages is not enough to be used as a legal instrument in law enforcement against the misuse of alcoholic beverages in the regions. Therefore, more stringent legal tools are needed and able to provide deterrent effects for perpetrators of abuse of alcoholic beverages with criminal sanctions through a regional.

To provide a deterrent effect against perpetrators of abuse of alcoholic beverages in the area, some of the provinces in Indonesia which before have formed regional regulation related to the control and supervision of alcoholic beverages in which regulates the imposition of criminal sanctions. Some of these provincial areas are given in Table 1. District/City in East Java is also many that have shaped the policies of supervision and control of alcoholic beverages in local regulation, as shown in the Table 2 [5]. In the Table 2, some of the district/city areas in East Java that have regulated control and supervision of alcoholic beverages with regional regulations, based on the data above it can be seen that out of 38 (eighty-eight) districts/cities in East Java, there are 16 (sixteen) regencies/cities or as many as 42% (four pulses of two percent) that have regulated the control and supervision of alcoholic beverages with regional regulation.

**Table 1:** Some provincial regions that have regulated control and supervision of alcoholic beverages by regional regulations

S. No.	Name of Provincial Region	Regional Regulation
1	Bali	Regional Regulation Number 5 of 2012
2	Special Region of Aceh	Rule Region No. 4 Year 1999 on the change with Bylaw No. mor 4 Year 2000
3	West Kalimantan	Regional Regulation Number 3 of 2009
4	Central Kalimantan	Regional Regulation Number 11 of 1996
5	South Kalimantan	Regional Regulation Number 7 of 2008
6	North Sulawesi	Regional Regulation Number 8 of 2000

**Table 2:** Some district/ city areas in east java that have regulated control and supervision of alcoholic beverages with regional regulations. Based on the data above it can be seen that out of 38 (eighty-eight) districts/cities in East Java, there are 16 (sixteen) regencies/cities or as many as 42% (four pulses of two percent) that have regulated the control and supervision of alcoholic beverages with regional regulation.

No.	Name of Regency / City Region	Regional Regulation
1	Regency of Bangkalan	Regional Regulation Number 17 of 2003
2	Regency of Gresik	Regional Regulation Number 15 of 2002
3	Regency of Madiun	Regional Regulation Number 8 of 2006
4	Regency of Mojokerto	Regional Regulation Number 3 of 2009
5	Regency of Nganjuk	Regional Regulation Number 3 of 1999
6	Regency of Pacitan	Regional Regulation Number 2 of 2011
7	Regency of Pamekasan	Regional Regulation Number 18 Year 2001
8	Regency of Pasuruan	Regional Regulation Number 10 of 2009
9	Regency of Sampang	Regional Regulation Number 30 of 2002
10	Regency of Sumenep	Regional Regulation Number 3 of 2002
11	Regency of Trenggalek	Regional Regulation Number 7 of 2009
12	Regency of Tuban	Regional Regulation Number 5 of 2004
13	Regency of Tulungagung	Regional Regulation Number 4 of 2011
14	Batu City	Regional Regulation Number 7 of 2012
15	Madiun City	Regional Regulation Number 2 of 2012
16	Malang City	Regional Regulation Number 5 of 2006

The provincial regulation and the regency/ municipality district regulation mentioned above based on Presidential Decree Number 3 of 1997 concerning Control and Supervision of Alcoholic Beverages which have been declared invalid and do not have binding legal force by the Supreme Court Decision in Case Number 42 P/HUM/ 2012. Therefore, the position of the provincial regulations and the regency/city regional regulation loses its juridical validity, so it must amend and adjusted to the development of legislation, specifically with Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages.

In accordance with the aforementioned legal developments, the East Java Provincial House of Representatives took the initiative to form a Regional Regulation on the Control and Supervision of the Distribution of Alcoholic Beverages to create peace and public order in the East Java Province community and to carry out orders in the Supreme Court Decision in Case Number 42 P/ HUM/2012 and to implement the provisions stipulated in Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages.

#### 4. Authority Control and Supervision of Circulation of Alcoholic Beverages by the Regional Government

Philipus M Hadjon stated that regional autonomy is the authority to establish the regulation of power and the formation of principles, as well as procedures for carrying

out them [6]. Therefore, Agusalm Andi Gadjong stated that regional autonomy means *zelfwetgeving* (making its own rules) and *selfbestuur* (self-government) [7]. According to Article 18 paragraph (5) of the 1945 Constitution of the Republic of Indonesia, it determined that the autonomy granted to the regions is as extensive as possible. The broadest freedom means that autonomous areas are given the authority to regulate and manage all government affairs, except government affairs, which are the authority of the central government as stipulated in the law [8]. To carry out the broadest possible autonomy, the regions given the power to form Regional Regulations as determined in Article 18 paragraph (6) of the 1945 Constitution of the Republic of Indonesia. The establishment of these regional regulations must be necessary on the authority stipulated in Law Number 23 the Year 2014 concerning regional government.

Establishment of regional regulations is the authority of regional governments to carry out local autonomy. Therefore, the power to form a Regional Regulation is the authority of attribution that comes directly from the 1945 Constitution of the Republic of Indonesia and the law. It means that the authorization to form a Regional Regulation is an inherent authority on regional autonomy. Local regulations are a direct consequence of regional autonomy. Through regional laws, provincial governments have given the power to form NSPK (norms, standards, procedures, and provisions) which serve as a basis for carrying out functions which are the authority of the regions both obligatory and optional.

Some of the reasons used as the basis for consideration in the formation of the Regional Regulation of East Java Province regarding Control and Supervision of Circulation of Alcoholic Beverages are:

- a) The absence of laws and regulations at the East Java provincial level that regulate the control of alcoholic beverages comprehensively as an effort to maintain peace and order in the East Java community.
- b) The absence of regulations has regarding the licensing procedures for selling alcoholic beverages, which are the authority of the Provincial Government.
- c) The absence of regulations regarding the procedure for issuing recommendations on the issuance of production licenses and alcoholic beverage sales licenses, which are the authority of the Central Government which requires proposals from the Provincial Government.
- d) The absence of regulations regarding the licensing and circulation of traditionally produced alcoholic beverages which has recently caused many problems.

- e) The absence of regulations regarding the control of the circulation of alcoholic beverages by limiting certain places through direct or retail sales.
- f) There is no regulation regarding the prohibition on the sale of alcoholic drinks within certain limits for holders of permits to sell alcoholic beverages.
- g) The absence of regulation regarding the prohibition of consuming beverages mixed with hazardous ingredients or in the community is known as "oplosan drinks." This prohibition must be accompanied by strict criminal sanctions for the makers and drinkers, to cause deterrent effects.

Related to the authority to control and supervise alcoholic beverages, starting from the procurement, distribution, and sale of alcoholic beverages, Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic beverages has divided authority between the Central Government, the Government Provincial Region, and regency/city and regional government as given in the Table 3.

**Table 3:** Distribution authority of control and supervision beverages alcoholic between the government centre, the government of the regional province and the government of the regional district / city

Government level	Article	Authority	Description of Authority
Central Government	Article 4 (1)	Licensing	Licensed production of beverage alcohol in the country by pe conduct the business of the Minister Perindus trian
	Article 4 (2)		Permit for importing alcoholic beverages by business actors from the Minister of Trade
	Article 4 (3)		Permission Marketing Authorization Beverages Alcoholic of the Head of BPOM ( Agency for the Supervision of Drug and Food
	Article 4 (4)		Permit Trading of three categories Beverages Alcoholic (SIUP-MB) from the Minister of Trade
	Article 5 (2)	Determination of Production Quality Standards	The quality standard for the production of alcoholic beverages is determined by the Minister of Industry
	Article 5 paragraph (3)	Determination of Standard Safety and Quality of Food	Food Safety and Quality Standards are set by the Head of BPOM
	Article 6	Labeling	Inclusion , governance means and requirements of labeling and supervision by the Minister of Health ( Article 35 of Law Number 7 Year 1996 on Food jo . Article 6 (1) and (2) and Article 59 Regulation of Government Number 69 Year 1999 concerning Label and Advertising of Food )
	Article 7 (1)	Direct Sales in Special Places	a. Alcoholic drinks can be sold in hotels, bars and restaurants that meet the requirements according to the laws and regulations in the tourism sector. b. Duty Free Store (TBB)
	Article 9	The setting is more about the Control and Supervision	Minister or Head of Institution Related to organize more further about the control and supervision of drinks alcoholic
	Province & Regency / City	Article 7 (2)	Direct sales in certain places
Article 7 (3)		Retail Sales	Sales Retail group A can be sold in the shop retailers in the form of packaging that is determined by the Regent / Mayor and Governor specialized Jakarta
Article 7 (4)		Limitation of Circulation of Alcoholic Beverages	Regent / Mayor and Governor specialized Jakarta can set restrictions Circulation Drink Beverages in Place Special , The Specific and store retailers .
Article 8		Implementation of Control and Supervision	Regent / Mayor and Governor specialized Jakarta do the control and supervision of the production, distribution, and sales Beverages Alcoholic Traditional to the needs of indigenous customs or ceremonies of religious in the area of work of each .

Distribution of authority for control and supervision of alcoholic beverages between central government, government provincial region, and regency/city regional government, based on the distribution of authority to control and supervise alcoholic drinks between the central government, provincial government and district/city government as stipulated in Presidential Regulation Number 74 of 2013 concerning Control and Supervision of Alcoholic Beverages above, then East Java Provincial Regulation Number 6 of 2014 regarding the Control and Supervision of Circulation of Alcoholic Beverages determine that the authority of the Provincial Government in controlling and controlling the circulation of alcoholic beverages are:

- a) Issue SIUP-MB (Alcoholic Beverages Trading Business License) for TBB (Duty-Free Stores) as retailers;
- b) Issuing recommendations for Distributors to obtain SIUP-MB class B and class C from the Government;
- c) Questioning circulation labels for Alcoholic Beverages;
- d) To supervise the circulation of MBT (Traditional Alcoholic Beverages) across Regency / City;
- e) Coordinate control and supervision over the distribution of alcoholic beverages by District / City Government.

TBB (Duty-Free Store) or *Duty-Free Shop* is a bonded stockpiling place to store goods of import origin and products originating from customs areas to sell to certain people. TBB must be sought by companies in the form of limited liability companies domiciled in Indonesia. Every TBB entrepreneur conducting business in trading class B and/or class C alcoholic beverages in retail must have SIUP-MB issued by the governor of East Java. To obtain SIUP-MB, employers must meet the requirements, namely:

- a) Photocopy of the deed of establishment of a limited liability company and ratification of a legal entity from an authorized official and amendment deed;
- b) Appointment letter from IT-MB to TBB as a retailer of alcoholic beverages;
- c) Photocopy of Business Place License (SITU);
- d) Photocopy of medium SIUP and large SIUP;
- e) Photocopy of Company Registration Certificate (TDP);
- f) Photocopy of Mandatory Identification Number (NPWP).

Distributors of alcoholic beverages must obtain SIUP-MB class B and/or class C from the Government based on recommendations from the Governor of East Java. The distributor of alcoholic liquor here is a company appointed by producers of alcoholic beverages

in domestic products and/or registered importers of alcoholic beverages (IT-MB) from imported products to distribute alcoholic drinks to retailers and sellers directly through sub-distributors in the marketing area. East Java Province. Issuance of SIUP-MB recommendations from the Governor of East Java delegated to the Head of the Trade Office. The advice can be issued if it has supported by the Field Research Minutes from the Office in charge of Regency / City trade where the company is domiciled.

To carry out control and supervision of the circulation of alcoholic beverages, the Government of East Java Province has the authority to issue circulation labels. The purpose of the distribution label here is the identification in the form of a sticker that affixed to each bottle or beverage package alcoholic. The circulation label must be installed on every product of import origin and domestic products circulated by Distributors, Sub-Distributors, Retailers, and Direct Sellers. To obtain a circulation label from attaching a photocopy of SIUP-MB Distributor and photocopy of distribution permit from the Head of the Food and Drug Supervisory Agency.

In addition to new alcoholic beverages, East Java Provincial Regulation Number 6 of 2014 also regulates the circulation of traditional alcoholic beverages (MBT). The meaning of MBT is a popular and hereditary alcoholic beverage which is packaged commonly, and the production is carried out at any time. The community conducting MBT production business activities must be in the form of a business group or cooperative and may only produce MBT no more than 25 (twenty-five) litres per day. The results of the MBT production prohibited from being distributed and/or sold outside the local district/city area. To carry out supervision of cross-circulation MBT district/city, then any business groups and cooperatives that undertake business activities MBT trans regency/municipality shall have SIUP-MBT of regent or mayor, except MBT for customs and religious ceremonies. SIUP MBT applies for 1 (one) year and can extend.

To enforce the law on the circulation and/or sale of alcoholic beverages in East Java Province, the East Java Provincial Government oversees distribution and/or sales alcoholic drinks and MBT. The supervision coordinated with the regent/mayor. In carrying out this supervision, the Governor of East Java assisted by an integrated team consisting of elements of the agency within the provincial government and other relevant agencies. In conducting control, the integrated team can include the police apparatus as a supporting element.

Based on authority control and supervision of circulation of alcoholic beverages by the regional government of East Java Province above, the Government of East Java Province has the authority to impose administrative sanctions and criminal witnesses against any person who violates the provisions concerning the circulation and/or sale of alcoholic beverages and MBT. Administrative

penalties imposed on anyone who violates licensing requirements in the distribution and/or sale of alcoholic beverages. Sanctions that can impose are in the form of written warnings, temporary closure of business, closure of business, and revocation of business licenses. Whereas the criminal penalties can impose on SIUP-MB holders and anyone who violates the prohibition (*verboten*) provisions in the circulation and/or sale of alcoholic beverages:

The prohibition provisions for the SIUP-MB holders in question are:

- a) Selling alcoholic beverages other than those listed in SIUP-MB;
- b) Selling alcoholic drinks in locations other than those specified by the Regent / Mayor;
- c) For TBB, selling alcoholic beverages in addition to people traveling abroad or passengers who are transiting in the customs area;
- d) Distribute and/or sell alcoholic drinks without packaging and distribution labels;
- e) Distribute and/or sell alcoholic beverages with ingredients that are not following the label listed;
- f) Distribute and/or sell alcoholic beverages on-site or in places adjacent to places of worship, schools, hospitals, youth venues, street vendors, terminals, stations, small kiosks, teenage inns, and campsites;
- g) transferring SIUP-MB;
- h) Direct trading of alcoholic beverages to end consumers for Distributors and Sub-Distributors; and
- i) Advertise alcoholic beverages in any mass media.

The provisions for the prohibition for every person in the business of circulation and/or sale of alcoholic beverages are:

- a) Distribute, store, sell and / or consume other than class A alcoholic beverages with ethanol levels up to 5% (five percent), class B with ethanol levels of more than 5% (five percent) up to 20% (twenty percent); and group C with ethanol levels of more than 20% (twenty percent) to 55% (fifty five percent) and MBT;
- b) To buy and/or drink alcoholic drinks class A, group B, and class C outside of 3, 4 and 5-star hotels, Restaurants with Talam Kencana and Talam Selaka Signs, and Bars;
- c) To buy class A, class B, and class C alcoholic drinks in retail other than at TBB or other specified places determined by the Regent / Mayor;
- d) Drinking alcoholic beverages at retail sales locations including TBB;
- e) Bring, enter and drink alcoholic beverages from outside to the area of direct sales without permission;

- f) Make, distribute, provide and/or sell alcoholic beverages without consent;
- g) Distribute and/or sell alcoholic beverages to people under the age of 21 (twenty-one) years as evidenced by the National Identity Card;
- h) Make, distribute, buy, sell and/or drink alcoholic beverages;
- i) Create, distribute, purchase and/or sell MBT other than for customs and religious ceremonies;
- j) Taking MBT in addition to activities and/or needs for customs and religious services; and
- k) Bring alcoholic beverages from abroad as luggage, except for self-consumption of at most 1000 ml (one thousand millilitres) per person with the contents of the packaging not less than 180 ml (one hundred and eighty billion).

Every SIUP-MB Holder who violates the prohibition provisions as mentioned above is subject to criminal sanction in the form of a fine of a maximum of IDR. 50,000,000.00 (fifty million rupiahs) and every person who violates the provisions of the prohibition as mentioned above is subject to criminal sanctions in the form of imprisonment no later than 6 (six) months or a maximum fine of IDR 50,000,000.00 (fifty million Indonesian rupiahs).

## 5. Conclusion

Abuse of alcoholic beverages has a terrible impact on the health and future of the East Java community. To guarantee peace and public order as a result worse than the abuse of alcohol, East Java Provincial Government has imposed a Regional Regulation of East Java Province No. 6 of 2014 on Control and Control of Alcoholic Beverages and Regulation of the Governor of East Java Province No. 66 of 2018 on the Rules Implementing Regulations Region of East Java Province Number 6 of 2014 concerning Control and Supervision of Circulation of Alcoholic Beverages.

Instrument control and supervision over the distribution of the drink is done through the provision of p e rising and recommendations as well as label circulation of the circulation of alcoholic beverages in the province of East Java. Every person who violates the licensing provisions in the circulation business and/or sale of alcoholic beverages is subject to administrative sanctions. For SIUP-MB Holders and any person who violates the prohibition (*verboten*) provisions in the circulation business and/or sale of alcoholic beverages shall be subject to criminal sanctions of a maximum of 6 (six) months or a fine of a maximum of IDR. 50,000,000.00 (fifty million rupiahs).

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## 7. Conflict of Interest

The authors have no conflict of interest.

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