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THE PATTERN OF SUPERVISION AND ACTION AGAINST ILLEGAL FINANCIAL TECHNOLOGY PEER TO PEER LENDING

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Abstract

The existence of illegal fintech is still a public concern due to the inadequate regulation tools that are able to regulate and take firm action against the existence of illegal fintech. The difficulty faced by regulators in taking action against illegal fintech is because it is difficult to be tracked and illegal entities that have been blocked can easily recreate new illegal fintech entities. This study was conducted by using normative legal research, which was reviewing material law that contains normative legal rules. As the result, there are conclusion namely, first Illegal fintech P2PL actors try to trick the public by resembling the company's platform name and/or logo, name, and identity color from legal fintech P2PL that has been registered/licensed at the OJK and SWI's efforts to take action against these fintech P2PL companies are by blocking sites, conducting joint inspections of business activities which assumed as illegal investments, ordering illegal fintech P2PL companies to stop business activities, and improving coordination in handling cases with related agencies. OJK through SWI seeks to stop the chain of Illegal fintech P2PL by routinely coordinating with the Minister of Communication and Information to block illegal services

Keywords: Fintech Peer to Peer Lending; Illegal; Regulation

INTRODUCTION

In developing the country's economy, the financial sector becomes crucial. Indonesia is still at the low level of financial inclusion compared with other ASEAN countries. The financial inclusion rate of Indonesia in 2018 was 49 % of the 75 % target for 2019.[1] The main function of the financial system itself is to transfer funds from parties who have surplus of funds to parties who lacks of funds, from household units, business entities or governments.[2]

The digital revolution has also reached the financial sector which has changed the way consumers behave and expect to do various financial and non-financial activities. Financial consumers want convenience, speed, accuracy, ease of access, and efficiency in carrying out their activities. Internet users in Indonesia in early 2021 have reached 202.6 million people. This number has increased by 15.5 % or 27 million people compared to

[1] OJK Optimis Inklusi Keuangan RI 90 Persen pada 2024, https://www.cnnindonesia.com/ekonomi/20201016074304-83-559042/ojk-optimistis-inklusi-keuangan-ri-90-persen-pada-2024 accessed on 8 June 2021
[2] Sunaryo, 2009, *Hukum Lembaga Pembiayaan*, Sinar Grafika, Jakarta, pg. 9

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the beginning of 2020. With a population of 274.9 million people, internet penetration in early 2021 reached 73.7%. A large number of smartphone users (aged 16 to 64) and high internet penetration have made Indonesia be one of the promising digital economic markets.[3]

In the digital revolution, the development and growth of financial technology are increasing rapidly. Peer to Peer Lending (P2PL) or Online Loans is a type of service that is excellent in society. P2PL is an online loan offer to loaners from fund providers such as fintech companies, fund providers using social media (Facebook and Twitter), and various fund providers using other media.[4]

The P2PL concept is the result of adjustments to technological advances, especially in the financial sector. The existence of P2PL is expected to provide services in digital financial transactions to make it more practical and secure. [5]Therefore, P2PL is a service change in the financial sector, which can reach consumers by using information technology as a media.[6] Like a coin that has two sides, so do the P2PL service. Besides having the advantages, it also has the disadvantages. The society must be careful of P2PL fintech companies that are not registered or unlicensed in the Financial Services Authority because it has a very high risk. For this reason, it is better not to have transactions either as a borrower or as a lender.

Based on a report by the Indonesian Fintech Association, the development of fintech in Indonesia in 2020 showed that more and more fintech startup companies had licenses. The number of AFTECH members at the end of 2019 increased by 54% from 275 members and kept increasing to 362 members in 2020.[7] However, in fact, fintech regulation is still not enough to mitigate the risk of fintech existence. Besides the benefits of fintech that can increase effectiveness and efficiency, the development of illegal fintech also has the side effects for consumers.

In October 2020, there were 206 illegal fintech P2PL handled by the Investment Alert Unit. Thus, the total of illegal fintech P2PL from 2018 to October 2020 were 2,923 entities.[8] The Investment Alert Unit blocked all of these fintech P2PL. In semester I/2021 there was an increase in the number of public complaints that were harmed by illegal P2PL by 80%.[9]This large number of illegal fintech P2PL shows that there are problems

3 Galuh Putri Riyanto, Jumlah Pengguna Internet Indonesia 2021 Tembus 202 Juta accesed on https://tekno.kompas.com/read/2021/02/23/16100057/jumlah-pengguna-internet-indonesia-2021-tembus-202-juta accessed on 2 August 2021

4 A. Bachman and B. Funk, 2015, *Journal of Internet Banking and Commerce*, No. January 2011

5 Muchlis, R, *Analisis SWOT Financial Technology (Fintech) Pembiayaan Perbankan Syariah Di Indonesia (Studi Kasus 4 Bank Syariah Di Kota Medan)*, AT-TAWASSUTH: Jurnal Ekonomi Islam. Vol. III No. 2 edition of 2018 pg 335-357.

6 Pramana, I. W. B., Atmadja, I. B. P., &Sutama (2018), *Peran Otoritas Jasa Keuangan Dalam Mengawasi Lembaga KeuanganNon Bank Berbasis Financial Technology Jenid Peer to Peer Lending*, Kertha Semaya: Journal Ilmu Hukum, 1-14, pg. 3

7 Millennia Aulia dan Tri Achya Ngasuko, *Dukungan Regulasi Fintech untuk Sektor Keuangan*, Badan Kebijakan Fiskal – Kementrian Keuangan, Edition VI 2020, pg. 42-45 https://jdih.kemenkeu.go.id/download/db16cf23-a162-4c68-b777-b24bd146ff97/Warta%20Fiskal.pdf accessed on 2 August 2021

8 Abdul Malik, *Ini Daftar 206 Fintech Lending Ilegal yang Ditutup Satgas Waspada Investasi pada Oktober*, Bareksa,https://www.bareksa.com/berita/belajar-investasi/2020-10-27/ini-daftar-206-fintech-lending-ilegal-yang-ditutup-satgas-waspada-investasi-pada-oktober accessed on 2 August 2021

9 Akbar Evandi, *SWI: Ada Penurunan Jumlah Blokir Pinjol Ilegal hingga Juli 2021*, Bisnis.com, https://teknologi.bisnis.com/read/20210715/84/1418235/swi-ada-penurunan-jumlah-blokir-pinjol-ilegal-hingga-juli-2021 accessed on 2 August 2021

in the fintech ecosystem that should be fixed by the government soon, especially in consumer protection.

Along with the development of fintech which keeps increasing, then it should be followed by clear regulations and supervision of the financial services business. OJK is the agency that regulates and supervises the growth and development of fintech. In terms of applying the duties, OJK established the Digital Innovation Development Unit of Economy and Finance.[10]

Until now, the existence of illegal fintech is still a public concern due to the inadequate regulation tools that are able to regulate and take firm action against the existence of illegal fintech. The difficulty faced by regulators in taking action against illegal fintech is because it is difficult to be tracked and illegal entities that have been blocked can easily recreate new illegal fintech entities.

The growth of the fintech business is mostly influenced by the trust factor, and to increase this trust, proper regulations or law arrangement is needed. The regulation must be able to actualize the legal certainty both for service providers and consumers protection. The lack of regulation can lead to crime and loss of consumers protection. However, rigid regulations also make the fintech industry difficult to develop in Indonesia.[11]

Based on the rationale elaborated above, the problem of this study is elaborated into the following questions How are the characteristics of Illegal Fintech P2PL that resemble the registered/licensed Fintech P2PL at the OJK and How is the pattern of supervision and action carried out by OJK against the illegal fintech P2PL?.This study aims, among others, first, to understand the legal consequences of the unsecured loan system in P2PL, Second, to be able to distinguish between illegal P2PL and Legal P2PL, Third, to explore how to escape the entanglement of Illegal P2PLThis study was conducted by using normative legal research, which was reviewing material law that contains normative legal rules.[12] The approach was conducted by examining various laws and regulations related to documents that can assist in dealing with what the problem is and how far Indonesian law regulates the problem.[13] This research is a qualitative research, the process of collecting data through literature review in the form of books, journals, reports and websites.

DISCUSSION

The Characteristics of Illegal Fintech P2PL that Resemble the Registered/Licensed Fintech P2PL at the Financial Services Authority

The birth of technology has an impact on the occurrence of convergence (integration) in the development of technology and communication, media and information

[10] Ernama Santi, Budiharto, Hendro Saptono, 2017, *Pengawasan Otoritas Jasa KeuanganTerhadap Financial Technology (PeraturanOtoritas Jasa Keuangan No. 77/POJK.01/2016)*, Diponegoro Law Journal Vol. 6 No. 3, pg.1-20

[11] Harry Chandra Sihombing, *Hukum dan Regulasi Startup Fintech di Indonesia: Tantangan dan Peluang, Lesson Learning dari negara lain*, accesed on https://www.academia.edu/33812550/Hukum_dan_Regulasi_Startup_FinTech_di_Indonesia_Tantangan_dan_Peluang_lesson_learning_dari_negara_lain accessed on 2 August 2021

[12] Bahder Johan Nasution, 2008, *Legal Research Methods*, Bandung, Mandar Maju, 2008, p.86

[13] Schotel, Bas, 2013, *Legilation, Empirical Research and Juridical Law, The Theory and Practice of Legislation1*.3, p. 501-532

(telematics). At first, each of these technologies seemed to run separately (linear), but now all these technologies have been united (convergent). This form of telematics convergence is marked by the risen of new technology products that combine the capabilities of information and communication system based on computer system that are connected to local, regional and even global networks.[14]

The coming of fintech in Indonesia is a breakthrough in business aspects that make it easier and more efficient. Fintech P2PL is a platform that brings together lenders and borrowers via internet. Borrowers are given the flexibility to choose the loan term and amount based on the borrower's needs. Indonesia is a market that has the potential in developing fintech P2PL because its people have a high interest about the existence of fintech P2PL. Therefore, if the government is able to reduce the risks and problems of fintech P2PL activities, it is certain that the fintech P2PLbusiness will be able to give benefits for the parties involved.[15]

The implementation of information technology-based of lending-borrowing services had been regulated in Article 1 point 6 of POJK No. 77/POJK.01/2016. In this case, the organizer is the Indonesian legal institution that provides, manages and operates the information technology-based lending-borrowing services.

The legal entity form of the lending-borrowing service provider can be in the form Persero (Ltd.) and Cooperation[16]. These requirements provide legal certainty for parties involved in profit business activities. In POJK No. 77/POJK.01/2016, it is regulated that various things regarding the requirements of a good fintech P2PLcompany, starting from the limitation of share ownership, minimum capital, maximum limits of loan and interest, the terms to create an escrow account, as well as several other principles that must be applied by fintech operators. POJK No. 77/POJK.01/2016 is the legal framework of fintech P2PL.

The development of the fintech industry is globally very rapid and this has an impact on the development of fintech in Indonesia. The existence of globalization has succeeded in awakening the spirit of the old debate about how the law is grafted from one place to another.[17] Regulation and supervision are very important for the sustainability of fintech in Indonesia. This is because the fintech business has potential risks related to consumer protection, financial system stability, payment systems, and economic stability.[18]

The existence of large profits in illegal fintech P2PL activities for the organizers becomes a factor why they do not register in the OJK. For registered/licensed fintech P2PL companies, the company must meet the available requirements. If a legal fintech P2PLcompany violates the regulations, OJK can immediately take firm action, which is the revocation of business licenses. Meanwhile, the illegal fintech P2PL companies that

[14] Salim, HS, 2010, *Perkembangan Teori Dalam Ilmu Hukum*, PT. Raja Grafindo Perkasa, Jakarta, 2010, p.70

[15] Wulandari, *Analisa Permasalahan berbagai Platform Pinjaman Daring (Peer to Peer Lending) dan Penanganannya di Indonesia*, Inspiration: Jurnal Teknologi Informasi dan Komunikasi, Vol. 10 No. 1, June 2020, p. 45-46

[16] Pasal 2 ayat (2) POJK No. 77/POJK.01/2016 tentang layanan Pinjam Meminjam Berbasis Teknologi Informasi

[17] Werner Menski, 2016, *Perbandingan Hukum dalam Kontesk Global, Sistem Eropa, Asia dan Afrika, Nusa Media*, Bandung, p. 47

[18] Meline Gerarita Sitompul, *Urgensi Legalitas Financial Technology (Fintech) Peer to Peer (P2P) Lending Di Indonesia*, JurnalYuridisUnaja Vol. 1 No. 2, Desember 2018, p. 68-79

are not supervised by the OJK can easily do violations.[19] The legal characteristic of the law is that only matters regulated by law can be taken into account, and in order to be taken into account, everything must have legal status.[20]

Table of Differences between Illegal Fintech P2PL and Registered/Licensed Fintech P2PL in OJK[21]

	Illegal Fintech P2PL	**Registered/Licensed Fintech P2PL**
1. Regulator/Supervisor	Does not have a special regulator who supervises the activities of the organizers.	Its activities are under the supervision of OJK.
2. Interest and Fines	Implementation of high and non-transparent fees and fines.	Transparent in giving maximum interest and fines to users. The maximum loan fee is 0.8 % per day and the total cost including fines is 100 % of the main loan value.
3. Regulatory Compliance	Violating the POJK terms and other applicable laws and regulations.	Required to obey POJK and applicable laws and regulations.
4. The Organizers	The organizers do not have experience standards that must be met.	Directors and commissioners are required to have at least one-year-experience in the financial services industry at a managerial level.
5. Debt Collection	Disobey the debt collection ethics and tends to be threatening, inhumane, and against the law.	Collectors are required to have a collector's certificate published by AFPI. Billing can be transferred to a collection service registered in AFPI. The billing process can be tracked and if a violation occurs during the billing process, OJK/AFPI can impose a penalty.
6. Association	Has no association and is not allowed to join AFPI.	Required to be an AFPI member.

[19] Ni Putu Maha Dewi Pramitha Asti, *Upaya Hukum Otoritas Jasa Keuangan dalam Mengatasi Layanan Pinjaman Online Ilegal*, Jurnal Hukum Kenotariatan: Acta Comitas, Vol 05 No. 01 April 2020, p. 111-122

[20] Satjipto Rahardjo, 2008, *Biarkan Hukum Mengalir: Catatan Kritis tentang Pergulatan Manusia dan Hukum*, Penerbit Buku Kompas, Jakarta, pg. 22

[21] Here are 14 differences to find out the comparison between illegal and legal borrowing as reported from the Finacial Services Authority website OJK, *Bahaya Fintech P2PL Ilegal*, https://www.ojk.go.id/id/kanal/iknb/data-dan-statistik/direktori/fintech/Documents/P2PL%20legal%20vs%20ilegal.pdf accessed on 2 August 2021

7. Office Location	Not transparent and some of them operate from abroad to avoid law enforcement.	The office location is clear and has been surveyed by OJK before getting a registered sign and the coordinates are easy to find on Google.
8. Status	No permission from the competent authority. The sites and applications are blocked by the Investment Alert Unit.	It is legal according to POJK No. 77.POJK.01/2016.
9. Lending-Borrowing Terms	Very Easy and no question for loan needs.	Checking the loan purpose and documents for credit scoring.
10. Consumer complaints	Not responding well to consumer complaints.	There is a consumer complaint facility and a follow-up mechanism for consumer complaints. Complaints can also be submitted through AFPI and OJK or through Alternative Dispute Resolution Institutions.
11. Organizers Competence	Not required to attend training or have any certificates.	Directors, Commissioners, and Shareholders are required to attend seminars and certifications organized by AFPI in order to have a common understanding of managing the business.
12. Personal Data Access	Consumers' personal access is not restricted and possible to be misused	Access is limited to camera, microphone, and location on the consumer's smartphone.
13. Lender Risks	Have a very high risk.	There are a virtual account and an escrow account.
14. National Security	Do not have a data recovery center in Indonesia.	Have to place the data recovery center in the Indonesia region.

Data Source: Finacial Services Authority website, 2021

The Illegal P2PL application is very easy to be accessed by the public, all that is needed is to download it from the Appstore on the smartphone. This facility also provides an opportunity for illegal fintech P2PL actors to easily create new applications with new names. Illegal fintech P2PL actors try to trick the public by resembling the company's platform name and/or logo, name, and identity color from legal fintech P2PL that has been registered/licensed at the OJK.[22]In 2019, SWI blocked 1,493 illegal P2PL accounts and for the period January 2020 to July 2021 as many as 614 accounts.[23]The society should be able to see the difference between Illegal fintech P2PL and fintech P2PLthat has been registered/licensed at the OJK in order to avoid fraud modes and losses for themselves. OJK has facilitated complaint services via telephone: 157 and email:humas@ojk.go.id.

1. The Pattern of Supervision and Action against Illegal Fintech P2PL

The rapid growth of fintech P2PL has surpassed the speed of regulatory adaptation. Much of the concern to delays in regulation is about user protection. The challenge is to ensure that the financial products offered by fintech P2PL to consumers are carried out fairly and transparently. The existence of the fintech P2PL business is followed by various problems, especially with the large number of illegal fintech P2PL. This condition is caused by inadequate regulations that protect consumers from the practice of illegal fintech P2PL companies. OJK has not been able to do much because there is no law that regulates illegal fintech. OJK is only authorized to regulate fintech activities that have been registered/licensed at OJK. The increasing number of illegal fintech is in line with the increasing number of complaints to the OJK. In December 2020, there were 6,787 complaints and in March 2021, the total complaints to OJK were 5,421 complaints.[24]

To overcome all problems caused by Illegal Fintech P2PL, a third party is needed as a regulator. In Article 9 of Law no. 21 of 2011, it is emphasized that the OJK has the authority to issue permits, regulate, supervise and impose penalties. These authorities must be followed by financial institutions including fintech P2PL companies.

For this reason, regarding the risen of Illegal fintech P2PL, an Investment Alert Unit (SatgasWaspadaInvestasi/SWI) was formed based on the Decree of OJK Commissioners Councils No. 01/KDK.01/2017 dated January 1, 2017, concerning the Establishment of a Unit handling the Illegal Acts in the Field of Public Fund and Investment Management. The establishment of SWI aims to monitor illegal acts in the field of fundraising in society and investment management that can be identified more quickly and accelerate the legal process against illegal investment practices that occur in society, especially in the local regions.[25]

The implementation of the SWI duties consists of 3 parts, namely:[26]

1. Preventive

[22] Ahmad Buchori, OJK Sulteng: Waspada Penawaran Fintech P2PL Ilegal, https://www.antaranews.com/berita/2146198/ojk-sulteng-waspada-penawaran-fintech-lending-ilegal-jelang-hari-rayaaccessedon 2 August 2021

[23] Akbar Evandio, SWI: Ada Penurunan Jumlah Blokir Pinjol HIngga 2021, https://teknologi.bisnis.com/read/20210715/84/1418235/swi-ada-penurunan-jumlah-blokir-pinjol-ilegal-hingga-juli-2021 accessedon 2 August 2021

[24] Yosepha Pusparisa, Masalah di Balik Pesatnya Pertumbuhan Fintech Pinjam Meminjam https://katadata.co.id/ariayudhistira/analisisdata/608059aa0ace4/masalah-di-balik-pesatnya-pertumbuhan-fintech-pinjam-meminjam accessed on 2 August 2021

[25] Swisma, *Bahas Perlindungan Konsumen Berinvestasi*, accesed on https://www.jurnalasia.com/edukasi/bahas-perlindungan-konsumen-berinvestasi-imahmi-usu-seminarkan-economic-law-2017/accessedon 2 August 2021

[26] Majalah Edukasi Konsumen OJK, (Edisi Juni 2017), pg. 7 https://sikapiuangmu.ojk.go.id/FrontEnd/CMS/DetailMateri/375 accessed on 2 August 2021

a. Coordinating between SWIs to improve education and understanding of Illegal fintech P2PL;
b. Dissemination to the society, law enforcers, local government, and academics;
c. Identify, evaluate and take necessary action on offers through various media, unlimited via the internet;
d. Conducting education and socialization to financial services industry operators.

2. Curative

Give warnings to companies that make offers that potentially harm society and guide them to obtain an operating license based on applicable regulations.

3. Repressive

Take legal action for violations of the laws and regulations.

In early 2021, SWI announced a list of 133 Illegal fintech P2PL platforms that potentially harm society from December 2020 to January 2021. As prevention, SWI conducts regular cyber patrols to reduce the findings number of fintech P2PL.[27] SWI's efforts to take action against these fintech P2PLcompanies are by blocking sites, conducting joint inspections of business activities which assumed as illegal investments, ordering illegal fintech P2PL companies to stop business activities, and improving coordination in handling cases with related agencies. OJK through SWI seeks to stop the chain of Illegal fintech P2PL by routinely coordinating with the Minister of Communication and Information to block illegal services.[28]

Table of Some Cases of Illegal Fintech P2PL (2019-2020)[29]

Year	The Case	The Job	Loan (Rp)	Total (Rp)	The Impact
2019	1. Z	Taxi Driver	Not mentioned	Not mentioned	Suicide
	2. YI	Entrepreneur	680.000	1.054.000	Personal photo is spread intentionally and Libel.
	3. SM	Unemployment	5.000.000	75.000.000	Defamation/Libel

[27] Noverius Laoli, Satgas Waspada Investasi Rilis 14 Kegiatan Usaha Tanpa Izin per Januari 2021, https://investasi.kontan.co.id/news/diklaim-turun-satgas-waspada-investasi-rilis-14-entitas-ilegal-per-januari-2021accessedon 2 August 2021

[28] https://aptika.kominfo.go.id/2021/07/sejak-januari-hingga-juni-2021-kominfo-tangani-447-fintech-ilegal/accessedon 2 August 2021

[29] Tirta Segara, Commissioner for Consumer Protection at OJK, acknowledged that the growth of the fintech lending market is also accompanied by problems. In addition to the spread of personal data, they often experience terror. There are even cases that encourage customers to commit suicide.Yosepha Pusparisa, Masalah di Balik Pesatnya Pertumbuhan Fintech PinjamMeminjam" https://katadata.co.id/ariayudhistira/analisisdata/608059aa0ace4/masalah-di-balik-pesatnya-pertumbuhan-fintech-pinjam-meminjam accessedon 2 August 2021

2020	4. NF	Public Transportation Driver	Not mentioned	Not mentioned	Terror
	5. ST	Not mentioned	Not mentioned	Not mentioned	Suicide
	6. AK	Not mentioned	8.000.000	Not mentioned	Suicide
	7. Rahayu	Entrepreneur	700.000	3.632.000	Libel, and personal photo is spread intentionally.
	8. Oktyas	Housewife	1.000.000	1.500.000	Defamation/Libel

Data Source: Processed by Mass Media Coverage, 2020

The participation of society is very much needed in handling or preventing the growth of illegal fintech P2PL companies, especially in terms of not being a user of illegal fintech P2PLactivities and reporting immediately if they find or get unreasonable investment offers before the activity causes many victims. It is hoped that society will not be easily tempted by unreasonable offers.

Blocking is a short-term solution to suppress the growth of illegal fintech. However, on the other hand, people still continue to search through applications outside the Playstore or Apple Store to use a VPN. For this reason, education and literacy efforts to the public so as not to be trapped by illegal fintech are continuously carried out by the Ministry of Communication and Information together with partners including OJK.[30]

CONCLUSION

Illegal P2PL application is very easy to be accessed by the public, all that is needed is to download it from the Appstore on the smartphone. This facility also provides an opportunity for illegal fintech P2PL actors to easily create new applications with new names. Illegal fintech P2PL actors try to trick the public by resembling the company's platform name and/or logo, name, and identity color from legal fintech P2PL that has been registered/licensed at the OJK. The society should be able to see the difference between Illegal fintech P2PL and fintech P2PL that has been registered/licensed at the OJK in order to avoid fraud modes and losses for themselves. OJK has facilitated complaint services via telephone: 157 and email: humas@ojk.go.id.

SWI's efforts to take action against these fintech P2PL companies are by blocking sites, conducting joint inspections of business activities which assumed as illegal investments, ordering illegal fintech P2PL companies to stop business activities, and improving coordination in handling cases with related agencies. OJK through SWI seeks to stop the chain of Illegal fintech P2PL by routinely coordinating with the Minister of Communication and Information to block illegal services.

[30] Leski Rizkinaswara, *Sejak Januari Hingga Juni 2021 Kominfo Tangani 447 Fintech Ilegal* https://aptika.kominfo.go.id/2021/07/sejak-januari-hingga-juni-2021-kominfo-tangani-447-fintech-ilegal/accessedon 2 August 2021

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