




# The Legal Protection for Folk Songs from Unknown Origin: Orientation and Formulation in the Perspective of Legal Cybernetics

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## Abstract

**Introduction:** The existence of the phenomenon of regional songs whose regional origins are unknown has led to legal problems in the form of a legal vacuum regarding legal protection. Existing laws and regulations are still missing in providing arrangements regarding regional songs whose regional origin is unknown.

**Purposes of the Research:** This study aims to analyze and at the same time seek legal protection through special arrangements regarding regional songs whose regional origins are unclear.

**Methods of the Research:** Normative legal research with a conceptual and statutory approach.

**Results of the Research:** The orientation to provide legal protection for folk songs of unknown origin can actually be carried out by issuing specific implementing regulations that regulate and facilitate folk songs of unknown origin to obtain legal protection. Legal protection for folk songs of unknown origin in the perspective of legal cybernetics can be carried out by establishing special regulations, research and studies, as well as cultural titles and festivals for folk songs of unknown origin. This is because legal protection for folk songs of unknown origin based on a legal cybernetics perspective needs to be carried out, especially by involving the political will of the local government and local cultural figures.

## 1. INTRODUCTION

Folk songs are one of the results of people's intellectual creativity that are qualified as copyright which is part of intellectual property. As part of copyright, folk songs also have an orientation to get legal protection like other copyrights.<sup>1</sup> Even so, copyright to folk songs has characteristics that are different from copyright in general. This is because the copyright characteristics of folk songs are communal in nature and do not emphasize the economic dimension.<sup>2</sup> This means, copyright to folk songs is communal and becomes "property" and "identity" for people in a particular area.

<sup>1</sup> Muchtar Anshary Hamid Labetubun, "A Legal Awareness of Copyright on Regional Song Creators," *International Journal of Law Reconstruction* 5, no. 1 (2021): 49–61, <https://doi.org/10.26532/ijlr.v5i1.15406>.

<sup>2</sup> Salahuddin L Little, "Perlindungan Hak Cipta Lagu Hulondhalo Lipuu Dalam Peraturan Daerah Provinsi Gorontalo Nomor 7 Tahun 2017," *Jurnal Al Himayah* 4, no. 1 (2020): 118–41.

I Komang Gede Kurniawan, I Made Wirya Darma, "The Legal Protection for Folk Songs from Unknown Origin: Orientation and Formulation in the Perspective of Legal Cybernetics"

Another characteristic about folk songs is that folk songs generally have no official validity regarding their creator. This confirms that folk songs are anonymous (they do not have an official creator). This makes the regulation regarding copyright for folk songs get its own emphasis as affirmed in Article 38 paragraph (1) of Law No. 28 of 2014 concerning Copyright (HC Law) which emphasizes that the state has a large share in regulating copyright for regional songs. In fact, the state also won copyright related to the communal folk song.

Further regulation regarding copyright related to communal folk songs is regulated in PP No. 56 of 2022 concerning Communal Intellectual Property (PP KIK). PP KIK specifically regulates things that must be considered in the context of registering communal intellectual property because communal intellectual property has characteristics with communal intellectual property in general.<sup>3</sup> Communal intellectual property, one of the regulated aspects, is related to traditional cultural expressions, one aspect of which is music or regional songs as affirmed in Article 7 paragraph (1) letter b PP KIK.<sup>4</sup> Although there have been arrangements regarding folk songs, there are problems regarding the fact that there are folk songs of unknown origin. If in general folk songs are only unknown to their creators, but in fact there are folk songs of unknown origin.<sup>5</sup>

One of the folk songs of unknown regional origin is the song *Yamko Rambe Yamko*. Although in general the song *Yamko Rambe Yamko* is "perceived" as lau from the Papua region, there is no official clarification that the song is a song from Papua. This is reinforced by the view of Nomensen Mambraku who is the Chairman of the Tanah Papua Arts Council who asserts that there is no tribe in Papua that claims the song *Yamko Rambe Yamko* is from their region and even from a linguistic aspect there is no language in Papua that matches the lyrics of the song *Yamko Rambe Yamko*.

The polemic of the song *Yamko Rambe Yamko* which is not from Papua causes problems because in general there has been a stigma attached that the song is a song from the Papua region. In addition, there are various Indonesian choir groups that have become champions at the international level who also use the song *Yamko Rambe Yamko* which is believed to be an indigenous Papuan song and shows Indonesian cultural identity.<sup>6</sup> The polemic of the song *Yamko Rambe Yamko* is an example of a folk song whose origin is not yet clear. In the context of copyright law, this creates legal problems because in existing laws and regulations there is no specific regulation regarding regional songs whose regional origin is not yet clear. Therefore, this study focuses on analyzing and seeking legal protection through special arrangements regarding folk songs of unclear origin.

Research on copyright related to folk songs can be said to be still small and not as much research related to copyright regarding commercial songs. This is because copyright is identified with every work that is oriented towards a commercial nature. In fact, like folk songs, there are also creations that have more moral aspects and do not have an economic orientation like copyright in general. Research on copyright related to folk songs was

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<sup>3</sup> Bagus Gede et al., "Kekayaan Intelektual Komunal Dalam Perspektif Uu Hak Cipta," *Supremasi* 18, no. 56 (2023): 1-12.

<sup>4</sup> Diah Imaningrum Susanti, "Eksplorasi Perlindungan Kekayaan Intelektual Komunal Berbasis Hak Asasi Manusia," *Media Iuris* 5, no. 3 (2022): 401-28, <https://doi.org/10.20473/mi.v5i3.40174>.

<sup>5</sup> Anak Agung Sagung Istri Ratu Agung Pratiwi Ningrat and I Gede Agus Kurniawan, "Digital Business Problems and Regulations in an Integrative Legal Perspective," *Syiah Kuala Law Journal* 7, no. 2 (2023): 141-56.

<sup>6</sup> Dinny Mutiah, "Yamko Rambe Yamko Antar Jakarta Youth Choir Juara 2 Lomba Paduan Suara Di Eropa" ([www.liputan6.com](http://www.liputan6.com), 2022).

conducted by Jonathan (2019) which discusses legal protection for folk songs whose creators are still unclear.<sup>7</sup> The novelty of this study is that regional songs whose creator is not yet clear can be subject to legal protection as in Article 38 paragraph (4) of the HC Law.

The next research was conducted by Aulia and Idris (2020) who discussed the copyright of folk songs in the Kerinci area.<sup>8</sup> The novelty of this study is that at the same time folk songs do not emphasize economic aspects, as long as regional songwriters can be identified, the economic aspects of regional song copyright need to be fulfilled as an effort to provide appreciation for the creation of songs that are beneficial to the region. Further research was also conducted by Marwati and Wijaya (2024) who emphasized that the Obey tribal folk song in Papua needs to get a copyright guarantee to maintain its sustainability as well as a means of pride for the Obey tribe community in Papua for its folk song.<sup>9</sup> Of the three previous studies, research that specifically discusses legal protection for folk songs of unknown regional origin has never been carried out by the three previous studies. This also confirms that research that discusses legal protection for folk songs of unknown regional origin is original research.

## 2. METHOD

This study, which discusses legal protection for folk songs of unknown regional origin, is a normative legal research. As normative legal research, the review of laws and regulations becomes the main activity to then be associated with legal principles, theories, and concepts sourced from library legal materials.<sup>10</sup> The primary legal materials used in this study are: the 1945 NRI Constitution, the HC Law, and the KIK PP. Secondary legal materials used are journal articles, books, and various studies that discuss folk songs. Copyright, as well as intellectual property. The non-legal material used is a dictionary of languages. The approach used in this study is a concept and legislation approach.

## 3. RESULTS AND DISCUSSION

### 3.1 The Legal Protection Orientation For Folk Songs Of Unknown Regional Origin

Folk songs are one of the aspects that must get legal protection, especially related to copyright. This is because folk songs are part of intellectual property that is the object of copyright and therefore folk songs should be part of the object of legal protection from copyright regulations.<sup>11</sup> Article 1 point 1 of the HC Law provides an understanding that copyright is the exclusive right of the creator which is automatically based on the declarative principle. The declarative principle, which in other terms is known as first to use,

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<sup>7</sup> Berthon Jonathan, "Perlindungan Hukum Terhadap Lagu Daerah Yang Tidak Diketahui Penciptanya," *University of Bengkulu Law Journal* 4, no. 2 (2019): 175.

<sup>8</sup> Isran Idris M. Zulfa Aulia, "Hak Cipta Dan Eksploitasi Ciptaan Lagu Daerah Kerinci: Perspektif Pencipta," *Masalah-Masalah Hukum* 49, no. 4 (2020): 425.

<sup>9</sup> Agustina Marwati and Kadek Indra Wijaya, "Memahami Nilai Budaya Yang Terkandung Dalam Lagu Tradisional Suku Ohey, Papua," *Ikonik* 5, no. 1 (2024): 41.

<sup>10</sup> Philip Langbroek et al., "Methodology of Legal Research: Challenges and Opportunities," *Utrecht Law Review* 13, no. 3 (2017): 1–8, <https://doi.org/10.18352/ulr.411>.

<sup>11</sup> Kristelia García, James Hicks, and Justin McCrary, "Copyright and Economic Viability: Evidence from the Music Industry," *Journal of Empirical Legal Studies* 17, no. 4 (2020): 696–721, <https://doi.org/10.1111/jels.12267>.

emphasizes that a copyrighted work immediately receives legal protection after a public announcement related to the work or work.<sup>12</sup>

Related to the definition of one's own creation, Article 1 point 3 of the HC Law that creation includes every work based on intellectual work that covers the results of art, science, mind, imagination, skills, and the like and has been manifested in tangible form. This provision confirms that an attempt to annifellate a work in tangible form is an absolute condition of guaranteed copyright protection. This means that works that are still in the form of certain ideas, ideas, and formulations that have not been manifested have not received legal protection guarantees related to copyright.<sup>13</sup> Limitedly, Article 40 paragraph (1) letter d of the HC Law confirms that one of the objects protected by copyright is a song whether it has text or not. This implies that songs, both instrumental and lyrical, get legal protection related to copyright.

The understanding of songs as in Article 40 paragraph (1) letter d of the HC Law must be broadly understood which in this context includes folk songs. This is because folk songs are also a product of human creativity and intellect. Referring to the provisions of Article 40 paragraph (1) letter d of the HC Law above, it can be concluded that folk songs are part of objects protected by copyright. Regional songs, which are the object of copyright protection as affirmed in Article 4 of the HC Law, actually have two rights that must be fulfilled and obeyed by the state. Both rights are moral rights and economic rights. Moral rights in relation to copyright are rights relating to ethical aspects of a work such as the announcement of the name of the creator in a work including the publicity of the name of a work creator for the existence of the work. Moral rights actually guarantee aspects of prestige and seek to appreciate the services of a creator of a work.<sup>14</sup> Economic rights have different characteristics from moral rights where economic rights are specific, which means they are rights that must be fulfilled as a consequence of the commercialization of a work. The basic difference between economic rights and moral rights is that these economic rights are transferable whereas moral rights are non-transferable.<sup>15</sup>

Related to folk songs, associated with the guarantee of moral rights and economic rights above, it can be concluded that folk songs focus more on fulfilling moral rights than economic rights. Even so, if this folk song is commercialized, then the creator of the regional song is still obliged to get the fulfillment of his economic rights. Even so, the main problem related to the fulfillment of economic rights and moral rights related to folk songs is based more on the characteristics of folk songs whose creators are anonymous.<sup>16</sup> The composer of the folk song seems vague and the creator is not known for certain. Although the creator is unknown, copyright legal protection related to folk songs can still be provided legal protection as stipulated in Article 38 paragraph (1) of the HC Law which confirms that the state is the copyright holder of traditional cultural expressions, which in this case also

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<sup>12</sup> Bob L. T. Sturm et al., "Artificial Intelligence and Music: Open Questions of Copyright Law and Engineering Praxis," *Arts* 8, no. 3 (2019): 115, <https://doi.org/10.3390/arts8030115>.

<sup>13</sup> Aram Sinnreich, "Music, Copyright, and Technology: A Dialectic in Five Moments," *International Journal of Communication* 13, no. 1 (2019): 422-39.

<sup>14</sup> Md Razidur Rahaman, "Protection of Traditional Knowledge and Traditional Cultural Expressions in Bangladesh," *Journal of Intellectual Property Rights* 20, no. 3 (2015): 164-71.

<sup>15</sup> Sahrul, Yogabakti Adipradana Setiawan, and Wahyu, "Theoretical Study of Legal Protection of Song Royalty on Digital Platforms," *Jurnal Ilmiah Dunia Hukum* 7, no. 2 (2023): 68-80.

<sup>16</sup> Pablo Bello and David Garcia, "Cultural Divergence in Popular Music: The Increasing Diversity of Music Consumption on Spotify across Countries," *Humanities and Social Sciences Communications* 8, no. 1 (2021): 3, <https://doi.org/10.1057/s41599-021-00855-1>.

includes folk songs. Article 38 paragraph (4) of the HC Law also confirms that further technical protection of regional song laws is regulated in a Government Regulation.

Article 6 of PP KIK further regulates the limits of the requirements for a regional song to be able to get copyright law protection which must meet the five cumulative requirements, namely: maintaining the existence of traditional community values and perspectives, maintained and fostered by community communal institutions, sustainable development by the local community, socialized and disseminated from generation to generation, and affirming identity and respecting cultural diversity. Referring to the cumulative requirements for regional song protection as stated in Article 6 of PP KIK above, this actually creates problems, especially for regional songs of unknown origin to get legal protection.

Folk songs of unknown origin are another "variant" of folk songs whose creator is generally unknown. Even if the creator is not known in general, folk songs are still known from which region the song originated and developed.<sup>17</sup> What is interesting here is that there is a folk song of unknown origin in which besides the creator is not known the same thing as well as the origin of the region which is also not known specifically. The regional origin of folk songs of unknown origin is based solely on the "perceptions" and "preconceived notions" of the people. One concrete example of a folk song of unknown origin is the song Yamko Rambe Yamko. Although in the view of the people the song is from Papua, but from about 250 languages in Papua claim not to be identified with the song.<sup>18</sup> This actually creates legal problems as an effort to protect the song Yamko Rambe Yamko legally, especially in the perspective of copyright.

The song Yamko Rambe Yamko besides being identical to its origin from Papua is also quite famous to foreign countries because this song is often used by choir groups from Indonesia in participating in festivals to competitions at the international level which also produce several international awards. This actually confirms that the song Yamko Rambe Yamko besides being familiar also provides benefits in the form of Indonesia's good name at the international level, especially related to the choral aspect. Even so, the problem regarding the song Yamko Rambe Yamko which later qualified as a folk song of unknown origin encountered its own problems. The problem is that there is a legal vacuum related to efforts to provide legal protection for regional songs of unknown origin, one of which is the song Yamko Rambe Yamko because it does not meet the provisions as in Article 6 PP KIK. The first provision is as in Article 6 of PP KIK which emphasizes the aspects of the existence of traditional community values and perspectives in a folk song. This implicitly emphasizes that to get legal protection, a folk song must be known in origin so that there is an orientation to aspects to maintain the existence of traditional community values and perspectives in the region.<sup>19</sup>

In the second provision relating to sustainable development by local communities, folk songs of unknown origin do not meet this aspect. This is exemplified by the song Yamko

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<sup>17</sup> T. A.N. David and Thomas LEE Chee Seng, "Copying Right In Copyright Law Fair Use, Computational Data Analysis And The Personal Data Protection Act," *Singapore Academy of Law Journal* 33, no. 2 (2021): 1032-82.

<sup>18</sup> Ayomi Amindoni, "Yamko Rambe Yamko: Dari 'modifikasi' Lagu Afrika Hingga Identitas Yang 'Disematkan' Pada Orang Papua" ([www.bbc.com](http://www.bbc.com), 2020).

<sup>19</sup> Sri Walny Rahayu and Widiya Fitrianda, "Ekspresi Budaya Tradisional Lagu Aceh Dan Model Pewarisannya," *Kanun Jurnal Ilmu Hukum* 22, no. 1 (2020): 25-48, <https://doi.org/10.24815/kanun.v22i1.12781>.

Rambe Yamko whose development is not carried out by the community in Papua but carried out by non-Papuans. The third provision relating to being guarded and banned by the communal institutions of the community is also not fulfilled because folk songs of unknown origin are also not considered folk songs by the surrounding community. In the fourth provision that discusses socialization and dissemination from generation to generation is also clearly not fulfilled because it is not considered a reflection of songs from the region, so the community does not have the initiative to spread the song.<sup>20</sup> The fifth provision relating to affirming identity and respecting cultural diversity is also not fulfilled, this is for example in the example of the song Yamko Rambe Yamko which according to some analyses comes from Swahili in Africa so that it is considered not a regional song from Papua.

The non-fulfillment of the conditions as stated in Article 6 of PP KIK above, actually creates a legal vacuum for regulations related to regional songs of unknown origin as exemplified in the case of the song Yamko Rambe Yamko. This problem actually requires efforts to regulate legal protection regarding folk songs of unknown origin. A folk song of unknown origin as exemplified, namely the song Yamko Rambe Yamko, actually requires special arrangements regarding legal protection, especially when the song Yamko Rambe Yamko is familiar both in the school environment and the general public who identify the song as a song from the Papua region. In addition, the song Yamko Rambe Yamko also has a role in giving Indonesia's good name in the international arena as evidenced by various awards obtained by choirs from Indonesia by singing the song Yamko Rambe Yamko. Orientation to provide legal protection for folk songs of unknown origin can actually be done by issuing implementing regulations of a special nature that regulate and facilitate regional songs of unknown origin to obtain legal protection. Regarding copyright holders for regional songs of unknown origin, the state has the authority to become the copyright holder as well as must conduct studies and research related to regional songs of unknown origin so that they are clear and can provide correct information to the public.

### **3.2 Formulation of Legal Protection for Folk Songs of Unknown Regional Origin: A Legal Cybernetics Perspective**

The problem related to the existence of folk songs of unknown origin and the existence of a legal vacuum related to legal protection efforts is one of the implications of the legal vacuum of copyright protection arrangements related to regional songs. Folk songs as part of the cultural treasures of a community must actually be identified and regulated specifically regarding legal protection efforts. If folk songs whose creator is unknown can be given legal protection, *mutatis mutandis*, regional songs of unknown regional origin should also get legal protection.<sup>21</sup> The existence of a legal vacuum in both the HC Law and PP KIK is what actually needs mutual attention.

The legal vacuum in Sudikno Mertokusumo's view is an excesses of the existence of positive law where the law will always be left behind with societal reality.<sup>22</sup> Positive law in

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<sup>20</sup> Sri Walny Rahayu Daniel Yovanda, "Perlindungan Hak Ekonomi Pencipta Dikaitkan Dengan Pembayaran Royalti Lagu Dan Musik Oleh Pelaku Usaha Restoran Dan Cafe Di Kota Banda Aceh," *Jurnal Ilmiah Mahasiswa Bidang Hukum Keperdataan* 3, no. 2 (2019): 280–89.

<sup>21</sup> Jevano Tri Alexander and R Rahaditya, "Analisis Pelaksanaan Pengelolaan Royalti Hak Cipta Lagu Dan Musik Oleh Lembaga Manajemen Kolektif Nasional Berdasarkan Peraturan Pemerintah No. 56 Tahun 2021," *Adigama* 4, no. 2 (2021): 3330–53.

<sup>22</sup> Sudikno Mertokusumo dan A. Pitlo, *Bab-Bab Tentang Penemuan Hukum* (Bandung: Citra Aditya Bakti, 2013).

relation to social development must be oriented to two aspects, namely trying to pursue the development of social reality and trying to create positive legal rules that are anticipatory to social development.<sup>23</sup> Of these two aspects, what may be done is an effort to pursue the development of social reality. This can be done if there are legal provisions that are responsive and "flexible" in facing the times.

In relation to efforts to provide legal protection for folk songs of unknown origin, one aspect that needs to be considered is the perspective of legal cybernetics. The perspective of legal cybernetics as proposed by Talcott Parson actually wants to emphasize that the reality of legal work does not exist in a "vacuum" and is not free from non-legal aspects.<sup>24</sup> The legal cybernetics perspective as proposed by Talcott Parson actually emphasizes that although law has its own mechanism and orientation, it must see and pay attention to the four subsystems that surround it which include: social, political, cultural, and economic.<sup>25</sup> These four subsystems constitute the four main subsystems that affect the formation and enactment of a law.<sup>26</sup> Referring to the perspective of legal cybernetics as stated by Talcott Parson above, its relevance to efforts to provide legal protection for folk songs of unknown origin can be seen in three arguments, namely: first, the legal vacuum for folk songs of unknown origin is actually an implication of weak research and studies related to existing folk songs. This can be exemplified by the phenomenon of the song Yamko Rambe Yamko which then made several agencies in Papua conduct studies and research in response to this incident.

In this aspect, non-legal subsystems, especially political subsystems occupy an important aspect, namely the lack of political will from the development of folk songs that develop in society. Second, related to the phenomenon of folk songs of unknown origin strongly emphasizes the role of cultural subsystems where if the cultural subsystem is responsive to the development of regional songs, then this can immediately provide input from legal aspects. Third, the social subsistence aspect is also important in relation to the phenomenon of folk songs of unknown origin. From social subsystems, the role of non-governmental organizations to the general public is needed to provide criticism as well as assist the government in conducting inventories related to regional songs of unknown origin. From the three arguments above, it can be concluded that the perspective of legal cybernetics actually has relevance to efforts to provide legal protection for folk songs of unknown origin. Referring to the perspective of legal cybernetics, the formulation to provide legal protection for folk songs of unknown origin can be done with three orientations, namely: the establishment of special regulations, research and study, and cultural titles and festivals for folk songs of unknown origin.

In the aspect of forming special regulations, it is necessary to have special regulations as implementers of the HC Law to fill the legal vacuum. This is because procedures and regulatory efforts related to legal protection for folk songs of unknown origin do not yet have an optimal mechanism. The next effort is to conduct research and studies related to folk songs of unknown origin. It can utilize and involve local culturalists to inventory folk songs of unknown origin. The next effort was to conduct cultural titles and festivals for folk

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<sup>23</sup> Satjipto Rahardjo, *Biarkan Hukum Mengalir* (Jakarta: Kompas, 2007).

<sup>24</sup> Lawrence T. Nichols, "Editor's Introduction: Parsons in Contemporary Perspective: An Ongoing Moral Career," *American Sociologist* 52, no. 1 (2021): 1–11, <https://doi.org/10.1007/s12108-021-09485-1>.

<sup>25</sup> Sufiana, "User Generated Content: Cybernetika Visual Narrative," *Businta* 5, no. 1 (2021): 71–81.

<sup>26</sup> dkk Ibnu elmi a. S. Pelu, "Sibernetika Hukum Talcott Parsons Sebagai Landasan Teoritis Dan Formulasi Teori Hukum," in *Prosiding Webinar Nasional IAHN-TP Palangka Raya*, 2021, 31.

songs of unknown origin. It is intended to see the development and popularity of folk songs of unknown origin. For example, the song Yamko Rambe Yamko is a folk song of unknown origin but is generally understood as a song from the Papua region and has a contribution to Indonesia, which is used as a choir competition at the international level. Based on the description above, legal protection efforts for regional songs of unknown origin based on the perspective of legal cybernetics need to be carried out, especially by involving the role of political will of local governments and local culturalists. This also requires legal protection efforts by specifically regulating legal protection mechanisms for folk songs of unknown origin.

#### 4. CONCLUSION

Orientation to provide legal protection for folk songs of unknown origin can actually be done by issuing implementing regulations of a special nature that regulate and facilitate regional songs of unknown origin to obtain legal protection. Regarding copyright holders for regional songs of unknown origin, the state has the authority to become the copyright holder as well as must conduct studies and research related to regional songs of unknown origin so that they are clear and can provide correct information to the public. Legal protection for folk songs of unknown origin in the perspective of legal cybernetics can be done by the establishment of special regulations, research and studies, as well as cultural titles and festivals for folk songs of unknown origin. This is because legal protection for folk songs of unknown origin based on a legal cybernetic perspective needs to be done, especially by involving the role of political will of local governments and local culturalists

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