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THE JURIDICAL IMPLICATIONS OF WITHDRAWAL LIFE-SUPPORT IN HOSPITAL IN INDONESIA

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ABSTRACT

Withdrawal life-support is mainly categorized as part of euthanasia. When viewed from the aspect of criminal law in force in Indonesia, Indonesia does not permit active euthanasia by anyone (including doctors and medics). If the doctor ends the patient's life by euthanasia is considered to violate criminal law. The study aimed to find out about life-support for patients with brainstem death in the hospital and to find out about the juridical implications of withdrawal life-support in cases of brain stem death. Based on the data discovered to be recorded, some conclusions that life support for brain stem death patients in the hospital is not needed because the element is futile. The juridical implications of withdrawal life-support in brain stem death patients in hospitals can be exempted from lawsuits if the doctor has implemented duties by medical ethics and acting in a medical professional manner, especially article 344 of The Criminal Code.

Keywords: Brain Stem Death; Hospital; Life Support.

INTRODUCTION

The development of Science and Technology in the field of medicine is currently very fast. Diagnostic, surgical, life support tools use qualified technology to assist medical personnel. However, the social and financial risks are enormous with these technological advances. Ease of diagnosis and treatment of difficult cases impacts the cost of care and treatment of patients who also soar. With the help of life-supporting devices or drugs such as ventilators, parenteral nutrition, or vasoactive drugs, the treatment of comatose patients and terminal states in the hospital is getting longer and more expensive. Social impacts also arise due to the uncertainty of how long the patient will be conscious or recover in both types of treatment. This causes the family to experience a dilemma whether to continue treatment or end it.

Decision-making regarding a critical patient's condition is very difficult because it is based on medical, bioethical, and medico-legal aspects. Determination of death is not as simple as in the past before the development of technology, where the death occurred when the heart and lung function had stopped irreversibly (Cardiopulmonary criteria).[1] Cardiopulmonary criteri from the mid-twentieth century cannot be used in all cases. With the advent of mechanical ventilators capable of maintaining respiration (as well as circulation) after brain function has ceased in cases of catastrophic head injury, for example, the determination of mortality is very difficult. We cannot answer the question of whether the patient lived or died.[1]

The condition of terminal state patients often makes families start to consider whether the treatment done to patients is continued or not. Terminal state patients are patients who experience disease conditions that have no hope of recovery, so they are very close to the death process. These considerations sometimes give rise to thoughts about whether euthanasia should be done, which is deliberately not doing something to prolong the patient's life or deliberately doing something to shorten the life or end the patient's life.[2]

Requests for euthanasia by the family may be caused by the patient's unconscious condition or coma for an indefinite period but still requires medical care that can sustain his life with high medical costs. Usually, patients are treated in the Hospital's Intensive Care Unit.

Euthanasia itself is divided into three: first, aggressive (active) euthanasia, which is a deliberate action by a doctor or other health worker to shorten or end the patient's life; secondly, passive euthanasia, namely doctors or other medical personnel who deliberately do not provide medical assistance to patients that can prolong their life; and third, non-aggressive euthanasia (auto-euthanasia), that the patient refuses firmly and consciously to accept medical treatment and the patient knows that his refusal will shorten or end his life.[2]

In Indonesia, the demand for euthanasia in comatose patients or a terminal state is like an iceberg phenomenon. The euthanasia demand is large, but it appears little. An example of a case is the case of an active euthanasia request on Sept 17, 2004. The patient's husband, Hasan Kesuma, asked the Bogor City Regional Representative Council's opinion regarding his desire to euthanize his wife, Mrs. Agian Isna Nauli, who for three months was unconscious after a C-section. The decision was based on economic limitations[3]. However, the state rejected the request for active euthanasia because euthanasia is against religion.[4] Another case came from East Kalimantan. In 2016, Humaida's family applied for lethal injection to the Supreme Court. Humaida had been lying incapacitated for five years and seven months at the Panglima Sebaya Regional General Hospital, East Kalimantan. Because the treatment needed requires a lot of money and more energy, the lethal injection option was thought of and became a last resort for the family so that Humaida could truly escape the suffering he was experiencing.[5]

Although explicitly Indonesia does not have a regulation on euthanasia and is not a juridical term, it has vast legal implications, both criminal and civil. In terms of applicable criminal law, Indonesia does not allow active euthanasia by anyone (including doctors and medics), as reflected in Article 344 of the Criminal Code (KUHP), which reads:

"Whoever loses the soul of another person at the request of his redundant person, whom he expresses and earnestly is sentenced to a maximum imprisonment of twelve's of the year ".[6]

The formulation of this article refers to the active form of euthanasia. There is no form of passive euthanasia.[7] However, Law Number 23, 1992 concerning health has not accommodated this euthanasia issue in its articles.[2]

The existence of brain stem death criteria in the latest death determination and the cessation of the function of the circulatory heart and respiratory systems makes it easier for doctors and medics to determine a patient's death. Especially in cases of prolonged comatose patients treated in the hospital's intensive care unit and receive life support. Orlowski et al. stated that "If treatment is futile in the sense that it will not achieve its physiological goals and offers no benefit to the patient, there is no obligation to provide care".[8] This opinion reinforces that the medical process and action can be stopped if they no longer have potential. In this connection, if a patient with the criteria for death is by Article 117 of Law Number 36 the year 2009 concerning health and has used a life support device in the form of a mechanical ventilator, then the treating doctor may remove that the device that is struggling to make a living. The termination of life assistance is regulated in the Regulation of the Minister of Health of the Republic of Indonesia Number 37 of 2014 concerning Determination of Death and Use of Donor Organs. However, life support therapies that can be stopped which are only "extraordinary", such as mechanical ventilators, cardiopulmonary resuscitation, control of dysrhythmias, tracheal intubation, vasoactive drugs, parenteral nutrition, artificial organs, transplants, blood transfusions, invasive monitoring, and antibiotics. Meanwhile, life support therapy that should not be stopped even if the patient is declared brain stem dead is the provision of oxygen, enteral nutrition, and crystalloid fluids.

The Regulation of the Minister of Health of the Republic of Indonesia Number 37 of 2014 concerning Determination of Death and Use of Donor Organs was made to implement

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Law Number 36 of 2009 concerning health, especially article 117.

As explained in article 8 of Law Number 12 the Year 2011, the Formation of Legislative Regulations is a juridical basis for the validity of other laws and regulations beyond what has been stipulated in Article 7 of the law. All other laws and regulations function to carry out orders of a higher level of legislation or exercise authority.[9]

However, it seems that there are still many conflicts between the medical community and the Indonesian people regarding the enforcement of this Minister of Health Regulation. Not all medical circles agree with the so-called Withholding or Withdrawal of life support.

Withhold life supports in the Ministerial Regulation is defined as delaying the provision of new or advanced life support therapy without stopping the ongoing life support therapy. Meanwhile, withdrawing life supports is stopping part, or all of the life support therapy that has been given to patients.[10] Withhold and withdrawal life supports are mostly defined as part of euthanasia. The debate regarding this matter does not only occur in Indonesia but throughout the world. Some argue that withdrawal life supports the same as euthanasia, but many say it does not. The pros and cons of euthanasia and withdrawal of life support have generated a lot of debate. Supporters of the legalization of euthanasia express their opinion that euthanasia and withdrawal life support are the same act. Both of them help patients relieve suffering. This is discussed by David E. Richmond in his article 'Are Withdrawal of Therapeutic Support and Administering Lethal Substances Ethically Equivalent?'.

In his writing, he presents two scenarios, for example, euthanasia and withdrawal life supports. In the first scenario, patients needed life support with the help of equipment such as hemodialysis and a respirator (breathing apparatus). This help became a burden because he believed he was not achieving anything of value by continuing it. In such circumstances, the patient has the right under New Zealand law to have the procedure terminated.[11]

There will usually be a lot of discussion among the various parties involved in the treatment before proceeding with the procedure, including letting the patient know that there is a slim chance that they may not die. When relief is removed, the patient's functional status will depend on how low his physiological status is during the life support period. In some cases, the patient may last for weeks, months, or even years; elsewhere, not at all. No one knew at the time.

When a patient dies, he dies naturally whose timing depends on the ability of his body to function to support life. In life support withdrawals, the doctor's motivation is not to cause the patient's death but to respect the patient's wishes regarding the nature of ongoing life support.

Conversely, in the second scenario, when a doctor agrees to a patient's request for euthanasia, both the patient and the doctor understand that the request is to end life immediately. In most cases, the patient's physiological system can still sustain life - perhaps even years. To kill the patient, the doctor administered a fatal dose of a lethal substance that disrupted the body's physiology so that it could no longer support its function, and the patient died an 'unnatural' manner of death.

Given the two scenarios above, Richmond would like to explain to us that the two actions are not equal and equal. Very different motives and expectations govern them. In the first scenario (withdrawing life supports), the medical staff's motive is to free the patient from interventions that cause distress and fail to facilitate long-term well-being. The result of the actions taken in this scenario is to allow the patient to die naturally. The motive of the medical staff in the second scenario (euthanasia) is to relieve the patient's fears, worries, and symptoms by killing them. The result of the actions taken in the second scenario is to trigger an 'unnatural' death.

In some countries, withdrawing life support can be done in terminal state patients because treatment is futile, does not provide progress in therapy, there is no hope of recovery. However, in some countries, the

reason for "futility" should not be used because futility is difficult to measure.

In the same paper, Richmond distinguishes withdrawing life support by two different methods. The first method is the same as the first scenario above, namely that life support is stopped before the patient's body is completely dead. The patient's functional index is returned to a level that the body can maintain naturally. The person ends up dying naturally, which may last hours, weeks, or in some cases, even years later. The second method is that life support is stopped when the patient's physiology is completely dead. In many cases, these patients are said to have brain stem death, and the life support system allows time for clinical assessment only. The patient will die naturally when the artificial support is stopped, even if death is delayed.

Health laws include the "lex specialis" law, which specifically protects the duties of the health professional (provider) in the human health care program towards the goal of the "health for all" declaration and the special protection of "receiver" patients to obtain health services.[12] This health law automatically regulates the rights and obligations of each service provider and service recipient, either as an individual (patient) or a community group [13].

The legal principle of lex specialis derogate legi generali is one of the legal principles which implies that a specific legal rule will override general legal rules.

Meanwhile, the "Health for all" declaration resulting from the Alma Ata Declaration in 1978 was a form of mutual agreement between 140 countries (including Indonesia) regarding Primary Health Care in Alma Ata, Kazakhstan. The International Primary Health Care Conference is sponsored by the World Health Organization (WHO) and the United Nations Organization for Children (UNICEF). The main content of this declaration is that Primary Health Service (Basic) is the main strategy for achieving health for all (Health for all) as a manifestation of human rights.

In the Health Law, the doctor-patient relationship is tied to the inspanning verbintenis relationship (commitment to endeavor) and verbintenis resultaat (result bonding), where the doctor tries to heal the patient and the patient wants the results of his efforts. Therefore the doctor-patient relationship is unique and specific. There is no single doctor (unless it can be proven otherwise) in providing medical services with bad faith (mens rea).

In a country that adheres to the common law legal system, medical malpractice and medical negligence are included in the tort (civil error law) jurisdiction, which uses a more civil law approach. This is different from the legal system in Indonesia, which places cases of alleged medical negligence as a violation of professional ethics, professional discipline, or law in general, both civil and criminal. As Agus Purwadianto said that "the risk of unwanted treatment in the treatment process can occur due to four things, that is doctors who treat practice below professional standards, violate ethics, violate discipline, and violate the laws ".[14]

From the description above, the authors feel it is urgent to research the juridical implication of withdrawal life-support equipment in hospitals, especially brainstem death patients, and the legal aspects of life support itself in patients who are declared brainstem dead in hospitals.This research is expected to be able to add insight into science both for the advancement of law science, especially health/medical law, especially regarding the impact of the law on terminating life-support for brainstem dead patients in hospitals. And expected to be a reference for doctors and hospitals to provide services to terminal state patients who receive life support at the hospital by the provisions of the Laws and Regulations.

RESULTS AND DISCUSSION

1. Legal Aspects of Life Support for Patients with Brainstem Death in Hospitals

The laws and regulations in Indonesia regarding life support for patients with brain stem death in hospitals are contained in the

Regulation of the Minister of Health of the Republic of Indonesia number 37 of 2014 concerning Determination of Death and the used organ. Article 13, paragraph 1 reads, "After a person is determined to be brain stem dead, all life support therapy must be stopped immediately.

Meanwhile, the disappearance of human life, which is considered as an act of euthanasia, is contained in Article 344 of the Criminal Code (KUHP), which reads, "Whoever removes the soul of another at the request of that person, whom he expresses and earnestly is sentenced to a maximum imprisonment of twelve years old".[6]

Life Support is a treatment and technique performed in an emergency to support life after failing one or more vital organs. Life Support is divided into two parts, namely Basic Life Support and Advanced Life Support, where the first action is non-invasive, which means it does not use needles or tools that can injure the skin.

Some considerations in providing life support in the hospital include:

1. Total life support is provided for critically ill or injured patients expected to survive without persistent severe brain failure. Although vital organ systems are also affected, the damage is still reversible. All possible efforts should be made to reduce morbidity and mortality.
2. Basic life support is not provided in cases of patients with persistent brain function or with the hope of brain recovery but who have heart, lung, or another organ failure or are in late-stage incurable disease.
3. In patients who, if treated, only slows the time of death and does not prolong life, no extraordinary measures are taken. In these patients, life support can be discontinued or postponed.
4. All life support is discontinued in patients with irreversible impairment of brain stem function.

The legal aspects of life support for brain stem dead patients in hospitals are reviewed from:

a) Legal Theory

Based on the legal theory developed by Hans Kelsen, law science is a normative science where the law is in the world of "sollen" (it should be), not in the world of "sein" (reality). If it is related to the field of law, and unlawful behavior should be followed by punishment even though, in fact, this is not always the case. Since the sanctions imposed on a person who violates the law depend on the determination of the institutions in the state, the legal norm, drawn up for the general public, must be seen as imperative for the state. The Pure Law Theory developed by Hans Kelsen answers the question "what is the law?" not "how the law should be?". Of these statements, the most important thing is whether the provision of life support to brain stem dead patients is based or not based on positive law. So that it is fair or unfair that providing life support to brain stem dead patients is only seen from the legal point of view of the life support itself. It is not based on ethical, sociological, or political considerations but legal considerations. Because patients with brain stem death have already been declared dead, the law for providing life assistance to the corpse is unnecessary for futile reasons.

b) Political Law

Indonesian legal politics adheres to a national legal system built on Pancasila and the 1945 Constitution. No. law grants special rights to certain citizens based on ethnicity, race, and religion. Even if there are differences, they are solely based on national interests in the framework of national unity and unity. Article 28A of the 1945 Constitution states, "Every person has the right to live and has the right to defend his life and life". Every competent doctor is obliged to perform life support therapy if he sees someone or a patient in the hospital experiencing a critical condition such as a cardiorespiratory arrest. Legal sanctions are given if life assistance is terminated or postponed. It is also considered an act of euthanasia by Article 344 of the Criminal Code, which reads, "Whoever kills another person's soul at the request of his person, which he mentions clearly and seriously is sentenced to a maximum imprisonment of twelve years".

However, the rapid development of science and technology in the field of medicine has had a socio-financial impact on the

community, especially the patient's family. The certainty of how long the patient will be treated is not there, especially in terminal state patients receiving mechanical ventilator life support therapy. Determination of death is not as simple as it used to be, where death had occurred when heart and lung function had stopped irreversibly.

Political Law is tasked with examining which changes need to be made to existing laws to meet new needs in people's lives. Legal formation takes into account the plurality of society. According to the author, society has a very important role in forming laws. In the author's analysis, the government made changes related to life support laws to prevent the phenomenon of the euthanasia iceberg in Indonesia.

Since the stipulation of brain stem death as one of the death criteria listed in article 117 of Law number 36 of 2009 concerning health, the government has issued a Regulation of the Minister of Health of the Republic of Indonesia number 37 of 2014 concerning Determination of Death and Utilization of Donor Organs.

According to the author, legal politics is also interested in differentiating life support therapy in terminal state patients and brain stem dead patients so that there is legal certainty. This is evidenced in Article 13 paragraph (1) of the Regulation of the Minister of Health number 37 of 2014, which reads, "After a person is determined to be brain stem dead, all life support therapy must be stopped immediately". This indicates that providing life support to patients who have been assigned and certified brain stem dead is no longer useful because medical action is futile.

As for providing life support to terminal state patients, some can be stopped, and some cannot be stopped. According to the author, the government describes the legal action in detail in Article 14 paragraph (5) and (6).

Article 14 paragraph (5) explains that life support therapy that can be stopped or postponed is only a measure of a therapeutic nature and/or treatment of an extraordinary nature (extraordinary), including a. Care in the Intensive Care Unit; b. Cardiac Lung Resuscitation; c. Dysrhythmia control; d. Tracheal intubation; e. Mechanical ventilation; f. Vasoactive drugs; g. Parenteral nutrition; h. Artificial organs; i. Transplant; j. Blood transfusion; k. Invasive monitoring; l. Antibiotic; and m. Other measures stipulated in medical service standards. However, this life-support therapy cannot be stopped or delayed (article 14 paragraph (6)).

Ordinary measures are all medical, surgical, or medicinal actions that offer a reasonable hope of "remedy", which can be obtained or performed without excessive cost, pain, or another discomfort. Meanwhile, extraordinary measures are all medical, surgical, or medicinal actions that cannot be obtained/performed without the high cost, pain, or inconvenience. If carried out, do not offer a reasonable hope of "improving the situation".

c) Legal Events

Legal events are ordinary occurrences in everyday life that are regulated by law. Or in other words, the actions and behavior of legal subjects bring legal consequences because the law has binding power for the legal subject or because the force of law binds the legal subject. In this case, the legal subject is a doctor or medical personnel, and the force of law is the law. Legal action, in this case, is life support. The number of cases of euthanasia requests in Indonesia is like the iceberg phenomenon, so the government makes a statutory regulation that strictly regulates life support actions or events in hospitals. So, according to the author, giving life support to patients with brain stem death must follow the rules listed in the minister of health regulation number 37 of 2014 concerning Determination of Death and Use of Donor Organs. The hospital director sets the policy regarding the patient's condition criteria. The decision to stop or postpone life support therapy for medical treatment for patients is made by the team of doctors who treat the patient after consulting a team of doctors appointed by the Hospital Medical Committee or Ethics Committee. Action plan for discontinuation or postponement of life support therapy must be informed and obtain the consent of the patient's family or patient's representative. The worst deterioration of the patient's condition ended in death. A person's

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death can be determined using clinical/conventional death diagnosis criteria or brain stem death diagnostic criteria. Determination of a brain stem dead person can only be carried out by a team of doctors consisting of 3 (three) competent doctors, and a diagnosis of brain stem death must be made in an intensive care unit (Intensive Care Unit). The procedures and requirements must examine to determine the diagnosis of brain stem death.

2. Juridical Implications of Withdrawal Life Support in Patients with Brainstem Death in Hospital

Criminal law regulates violations and crimes against legal norms regarding the public interest. As for what is included in the meaning of legal interests are:

1. Agencies and Regulations, such as the State, State Institutions, State Officials, and others. For example, criminal acts: rebellion, insult, not paying taxes, against civil servants carrying out their duties.
2. Legal interests of every human being, namely soul, body, freedom, honor, property, etc.

From a criminal law perspective, active euthanasia in any form is prohibited. Active euthanasia is prohibited in article 344 of the Criminal Code (KUHP), which reads:

"Whoever loses the soul of another person at the request of that person, whom he expresses and earnestly is sentenced to a prison of twelve years".

Article 344 does not use the words kill or take your life, but it is not appropriate to use it in the case of withdrawal life support. The formulation of this article refers to the active form of euthanasia. There is no form of passive euthanasia. According to some literature, Withdrawal life support is associated with passive euthanasia.

According to the author, in the case of termination of life support in brain stem dead patients, it can be released from lawsuits if the doctor has performed his duties by medical ethics and acts in a medical professional manner.

In seeing an error in a medical case, three main things must be seen: law, ethics, and the third discipline.

a. From a legal perspective

The first time you look at the doctor's administrative, legal evidence, do you have a valid Registration Certificate (STR) and Practice License (SIP)?

From a legal perspective, whether the doctor's actions are by the applicable laws. In-Law No. 36 of 2009 concerning Health, article 117 read: "A person is declared dead if the function of the circulatory heart system and respiratory system is proven to have permanently stopped, or if the death of the brain stem has been proven." The Law on Health adheres to the principle of Lex specialis derogate legi generali, which is the principle of legal interpretation which states that special laws (lex specialis) override general laws (lex generali. So that in the case of withdrawal life support for brain stem dead patients in the hospital, according to the author, Article 344 of the Criminal Code cannot be used.

b. In terms of Ethics

In terms of ethics, it is very difficult to prove a doctor in providing medical services with bad intentions (mens rea), unless it can be proven otherwise. In principle, the doctor-patient-family communication must be good. Before giving action or deciding something, the doctor needs to discuss it with the family (Informed Consent). Whatever the decision is up to the family. The doctor's explanation can be used to prove the doctor's action in withdrawing life support in brain stem dead patients.

c. In terms of discipline

In terms of discipline, the action of withdrawal life support in brain stem dead patients are by the applicable standard procedures in Indonesia, namely the Regulation of the Minister of Health of the Republic of Indonesia number 37 of 2014 concerning Determination of Death and Utilization of Donor Organs. According to the author, if the action is carried out by the steps of the Standard Operating Procedure, the doctor cannot be criminally charged.

As explained by Fuadi Isnawan in his writing entitled "Philosophical Study of the Pro-Cons of the Prohibition of Euthanasia", the development of legal science after 1987 saw new ideas as a complementary law enforcement standard, namely:

a. Can be released from lawsuits if doctors have performed duties by medical ethics and acted as medical professionals.
b. Can be released from lawsuits if it is in the form of pseudo euthanasia, which means:
    1) Terminate patient care because of symptoms of brain stem death
    2) End one's life in an emergency (emergency)
    3) They are providing medical treatment that is no longer useful. Doctors refuse medical treatment in the form of auto euthanasia, considering that doctors are not allowed to perform medical actions without the patient's permission because they are contrary to civil principles.

Regulation of the Minister of Health Number 37 of 2014 concerning Determination of Death and Utilization of Donor Organs is a statutory regulation that can be used as a standard procedure for medical personnel to take action. The investigator can also use this standard if there is a medical dispute between the doctor and the patient's family.

The things that need to be considered in these laws and regulations for brain stem death are:

1. Three competent doctors carried out the determination of brain stem death, involving neurologists and anesthetists.
2. Diagnosis of brain stem death must be carried out in the intensive care unit
3. The presence of preconditions in the form of coma and apnea caused by irreversible structural brain damage due to disorders that have the potential to cause brain stem death
4. Have eliminated the causes of coma and reversible respiratory arrests such as drugs, intoxication, metabolic disorders, and hypothermia.
5. Perform a brain stem death confirmation test.
6. Determine the timing of death together with the diagnosis of brain stem death.
7. There is informed consent before taking action with withdrawal life support.
8. Discontinuation of life support is carried out immediately after the diagnosis of brain stem death is established.

CONCLUSION

Based on the results of the discussion, the following conclusions can be drawn:

1. Life support for brain stem dead patients in the hospital is unnecessary because the elements are futile.
2. The juridical implication of withdrawing life support in cases of brain stem dead patients in the hospital can be released from lawsuits if doctors have performed their duties according to medical ethics and acted in a medical professional manner. In seeing an error in a medical case, three main things must be seen: law, ethics, and the third discipline. The Law on Health adheres to the principle of lex specialis derogate legi generali, namely the principle of legal interpretation, which states that special laws (lex specialis) override general laws (lex generali). So that in the case of withdrawal life support for brain stem dead patients in the hospital, they cannot be prosecuted under Article 344 of the Criminal Code.

SUGGESTION

1. Caution is needed in providing life support to brain stem dead patients in the hospital. Good communication between the doctor and the patient or the patient's family in the therapeutic contract should be as clear as possible to avoid misrepresentation of the actions taken by medical personnel to the treatment performed. It needs to be asked again about the family and the patient comprehend about explanation from the medical personnel, whether they understood and understood the explanation given.
2. There needs to be a special law regulating medical crimes to not mix withdrawal life support in brain stem death cases into acts

against general criminal law, especially Article 344 of the Criminal Code.

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