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Feasibility of Indigenous Peoples Protection Regulations: A Cost-Benefit Analysis Study on Indigenous Peoples' Academic Manuscripts

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Abstract

Indigenous legal communities are part of Indonesian society and have been constitutionally recognised through Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia. However, the absence of a specific law governing indigenous communities means that regulations remain scattered across sectoral regulations, creating legal uncertainty in the recognition of indigenous territories, land rights, and natural resource management. This study aims to examine the feasibility of regulations to protect indigenous communities by evaluating the Academic Draft of the Indigenous Communities Bill against legislative-formation standards and measuring the policy's feasibility using the Cost-Benefit Analysis (CBA) approach. The research method used is normative legal research, employing a statutory-regulatory approach and analysis of legal documents and secondary data. The results of the study indicate that the Academic Draft of the Indigenous Communities Bill has a strong philosophical, sociological, and juridical basis, but still requires strengthening in terms of empirical data, harmonisation of sectoral regulations, and implementation mechanisms to protect indigenous communities. The novelty of this research lies in the use of a Cost-Benefit Analysis approach to complement normative legal studies, enabling the feasibility of establishing regulations to be assessed not only from a legal perspective but also from economic, social, and environmental perspectives. The CBA results indicate that the benefits of establishing regulations to protect indigenous peoples outweigh the implementation costs, making the Indigenous Peoples Bill worthy of development as a sustainable legal instrument for their protection.

INTRODUCTION

Customary law societies are an important part of the Indonesian nation that existed long before the state was formed. Its existence is recognised and protected by Article 18B, paragraph (2), and Article 28I, paragraph (3), of the 1945 Constitution of the Republic of Indonesia, which affirms that the state respects and protects the traditional rights of indigenous peoples. However, until now, constitutional recognition has not been fully implemented through comprehensive arrangements under a special law on indigenous peoples. The absence of a comprehensive legal framework for many years has led to the regulation of indigenous peoples being dispersed across various sectoral regulations, resulting in legal uncertainty, particularly regarding the recognition of customary territories, land rights, and natural resource management. As in the previous research by Siska, entitled Urgency and Dynamics of the Process of the Customary Law Communities Bill in Indonesia, which examines the dynamics and urgency of the Indigenous Peoples Bill, with specific findings on the protection of land rights and natural resource management (Siska et al., 2025). This condition is exacerbated by overlapping sectoral regulations and weak coordination between government agencies, resulting in conflict and marginalisation of indigenous peoples (AMAN, 2016).

Based on data from the Customary Territories Registration Agency (BRWA) in 2024, there are around 28.2 million hectares of customary territories that have been identified, but only a small part have received formal legal recognition through local regulations and government decisions (BRWA News, 2024). This condition indicates a gap between the constitutional recognition of indigenous peoples and the implementation of legal protections at the administrative level. This uncertainty is one of the factors that cause the emergence of agrarian conflicts, weak protection of customary territories, and limited access to indigenous peoples in natural resource management (Komnas HAM, 2014)

Sociologically, indigenous peoples are often marginalised because state laws are not fully in line with customary laws that live in communities. Various development and investment policies often ignore customary values and customary rights that have existed for generations (Komnas HAM, 2014). As a result, social inequality has arisen and the loss of indigenous peoples' legal cultural identity. Meanwhile, in terms of regulations, provisions regarding indigenous peoples are scattered in various laws such as the Forestry Law, the Village Law, and the Regional Government Law, which have not been fully integrated (Safitri, Myrna, 2010)

Philosophically, this law is expected to realise justice and equality for all citizens. Juridically, the Indigenous Peoples Bill can serve as a legal umbrella that harmonises various sectoral rules and facilitates their implementation. Therefore, the establishment of the Indigenous Peoples Law is very important to provide legal protection and certainty. Previous research by Rangga Yudha Santosa and Krisna Bayu Pratama with the research title Analysis of the Urgency of the Ratification of the Indigenous Peoples Bill in Ensuring the Certainty of Indigenous Peoples' Rights in Indonesia: A Literature Study on the Stagnation of the Legislation Process Until 2025 has discussed the urgency of the ratification of the Indigenous Peoples Bill, especially on the certainty of their rights, so that the results illustrate the dynamics that hinder the process of drafting the manuscript as well as attract political and economic interests (Rengga, Krisna, 2025).

In this study, it has a development, namely discussing specifically the suitability of the academic text of the Indigenous Peoples Bill with Law Number 12 of 2011 and the Guidelines for the Preparation of the House of Representatives which is then equipped with the *Cost Benefit Analysist* So that in terms of substance and economy, the recognition and protection of indigenous peoples will also encourage sustainable development and become recommendations in encouraging policy making. The formulation of the problem is: how is the academic text of the Indigenous Peoples Bill compatible with the principles of drafting laws and regulations under Law Number 12 of 2011, and what is the feasibility of establishing regulations for the protection of indigenous peoples based on a cost-benefit *analysis.* The results of this research are expected to yield economic policy recommendations and evaluations for the House of Representatives, to inform the preparation of academic manuscripts, and to influence the process of drafting bills in ways that are not merely formalistic. So the author uses the title of the research: "Feasibility of Indigenous Peoples Protection Regulations: A Cost-Benefit Analysis Study on Indigenous Peoples Academic Manuscripts."

METHODS

The research method used is normative legal research, analysing the norms and rules of regulations related to the problems to be discussed. The research uses the conformity of the academic manuscript of the Indigenous Peoples Bill with Law Number 12 of 20122 and the Guidelines for DPR Regulations (Soekanto, 1981). Then, from these sources, it will be used as an analytical framework to identify the feasibility of the academic manuscript of the Indigenous Peoples Bill. The data collection technique used is by studying the literature and managing the secondary data

collected (Hasan, 2022). This research ensures that academic manuscripts comply with existing regulations related to the process of forming the Indigenous Peoples Law, producing regulations that provide certainty and justice for indigenous peoples and serve as input for the government.

DISCUSSION AND ANALYSIS

1. Analysis of the Substance of the Academic Manuscript of the Indigenous Peoples Bill

Academic Manuscripts are regulated in Law No. 12 of 2011, which can be summarised in several aspects based on Article 19 Paragraph (2) and Appendix 1 regarding preparation techniques. Implementively, the House of Representatives issued guidelines for the preparation of Academic Manuscripts which are in the same point as Law No. 12 of 2011, so that the author conducts an analysis of the Academic Manuscript of the Indigenous Peoples Bill guided by these indicators, namely:

a. Background, Purpose of Drafting and Problem Identification

In terms of regulations, the Constitution has recognised the existence of customary law communities as in Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution of the Republic of Indonesia, but in practice the status of customary law communities as legal subjects does not have certainty in sectoral laws, so that social and agrarian conflicts arise in customary territories. Many regulations are sectoral, dispersed, or not yet harmonised, such as different phrases and recognition procedures, so that indigenous peoples are often "left behind" in access to social, economic, cultural, and legal rights (Bedner, Yance, 2019). Indigenous peoples face land grabbing, unrecognised customary territories, and criminalisation when defending their territorial rights (Davidson, 2007).

The customary law practices of indigenous peoples are neither recognised nor acknowledged by national law or by dominant development and investment policies. In terms of legal culture, there is a discrepancy between the national legal system *(positive law)* and customary law and local practices *(living law)*. Positive laws sometimes fail to accommodate, or even marginalise, the norms of indigenous peoples (Bedner, Yance, 2019). This has an impact on the loss of identity, the erosion of local wisdom, and the sustainability of indigenous peoples' legal culture.

From the above identification, the background of academic manuscripts consistently indicates that the structural problems faced by customary law communities include weak

legal recognition, sectoral regulations, territorial conflicts and rights, and a legal-cultural climate that is not friendly to customary rights. Therefore, the establishment of the Indigenous Peoples Law is urgent, as it is supported by the constitutional mandate, the need for legal certainty, the strengthening of rights and empowerment, and efforts to resolve conflicts and injustices.

The background presented has contained the problems that occur and why there must be solutions through the formation of the law but does not elaborate on specific quantitative and qualitative data such as the number of indigenous communities that have not been recognized, the number of indigenous conflicts in customary territories, the socio-economic impact of marginalization, and shows how the previous law has not been able to solve these problems (Warren, 2012).

b. Theoretical Studies and Empirical Practice

In the academic text, concepts and phrases such as indigenous peoples, customary law communities, and traditional communities are the theoretical basis for the preparation of norms in this bill. This study confirms that customary law communities are autonomous and possess a legal system, socio-cultural ties, and distinctive customary territories. The principles of norm formulation are based on the principles of recognition, protection, and empowerment of indigenous peoples, which are in line with philosophical foundations such as human rights and social justice, and juridical foundations such as recognition in Article 18B paragraph 2 of the 1945 Constitution and related regulations. These principles include participation, justice, transparency, equality, humanity, national interest, harmony, and sustainability.

The implementation practices reveal the real conditions of indigenous peoples who have been experiencing marginalisation, customary land conflicts, inequality in access to education and public services, and unfair treatment in development (Murray, 2012). Indigenous peoples' recognition procedures have been considered political, convoluted, and ineffective, with overlapping regulations between institutions. Conflicts over customary land rights reflect structural problems experienced in many countries and pose a barrier to the protection of indigenous peoples' rights (RRI, 2015).

As an international comparison, this bill draws lessons from the experience of countries such as Malaysia, which has a system of recognition of indigenous peoples through the arrangement *of indigenous peoples,* which are differentiated into three main groups based on their territorial characteristics, namely the indigenous people in Peninsular Malaysia and the indigenous groups in Sabah and Sarawak. This arrangement shows that recognition of indigenous peoples is carried out by paying attention to the diversity of identities and characteristics of their respective communities (Nicholas, 2000).

Meanwhile, the Philippines, with the Indigenous Peoples Rights Act (IPRA) in 1997, provides more comprehensive recognition and protection of indigenous peoples by regulating rights to ancestral territories and cultural rights, and by establishing mechanisms for the certification of customary territories by specialised agencies. This comparison shows that the arrangement of indigenous peoples not only focuses on recognising the existence of communities but also includes legal mechanisms to ensure the protection of their rights (Republic of the Philippines Act No. 8371). The Indigenous Peoples Bill also refers to international norms such as ILO Conventions No. 107 and 169 and the 2007 United Nations Declaration on the Rights of Indigenous Peoples, to strengthen the proper recognition and protection of indigenous peoples (ILO, 1989).

The academic text of the Indigenous Peoples Bill presents a study on the consequences of implementing a system of recognition and protection for indigenous peoples as a whole. The new system is expected to provide legal certainty for the rights of indigenous peoples and improve their socio-economic conditions. From a fiscal perspective, the state has an obligation to provide financial support for implementing recognition, empowerment, and compensation for the use of customary territories by the state or the private sector (World Bank, 2023). However, this academic paper has not explicitly detailed the amount or mechanism of financing, where the lack of utilisation of advanced analysis methods such as Regulatory Impact Assessment (RIA) and Cost-Benefit Analysis (CBA) only confirms the need for sustainability and coordination between central and local governments (Bappenas, 2022). The state's financial burden will manifest as administrative recognition management and integrated, sustainable indigenous peoples' empowerment programs (Henley, Jamie, 2007).

c. Evaluation and Analysis of Related Laws and Regulations

Evaluation shows that the current regulation of indigenous peoples is fragmented across sectoral, partial laws and regulations. Several provisions contradict one another, particularly regarding the definition, indicators of recognition, and implementation of indigenous peoples' rights. For example, Article 67 of the Forestry Law requires that indigenous peoples be recognised in local regulations. In contrast, the Regulation of the Minister of Home Affairs and the Regulation of the Minister of Agrarian Affairs grant regional heads authority to recognise them. These differences in mechanisms cause legal inconsistencies and uncertainty. In addition, the recognition of indigenous peoples' traditions and rights is often marginalised in the practice of modern, economically oriented development policies, without regard for indigenous peoples' rights (Henley, Jamie, 2007).

The Academic Manuscript emphasises the need to unite, synchronise, and harmonise provisions on customary law communities across various laws and regulations to prevent disharmony that hinders implementation. This synchronisation is also important to provide legal certainty and effective protection for indigenous peoples. The proposed Indigenous Peoples Law aims to serve as a single legal umbrella that accommodates the diversity of indigenous peoples and regulates the recognition, protection, empowerment, and the comprehensive resolution of disputes within the framework of the Republic of Indonesia. However, in practice, harmonisation between central and regional government agencies remains weak, so coordination and collaboration in implementation are not optimal.

There is overlap and sectoralism in the arrangements for indigenous peoples across their constitutions, laws, and implementing regulations. The 1945 Constitution provides general recognition in Article 18B paragraph (2) and Article 28I paragraph (3), but does not regulate the details of the mechanism of recognition or protection. Some laws, such as the Village Law, the Forestry Law, and the Special Autonomy Law for Papua, have different, and sometimes conflicting, provisions regarding the recognition and rights of indigenous peoples. The Constitutional Court Decision No. 35/PUU-X/2012 affirms the incompatibility of state control over customary forests with the Constitution, but the implementation of customary rights remains problematic and prone to overlap. Sectoral policies also lead to unclear authorities and procedures, making it difficult to protect and empower indigenous peoples effectively (Arizona et al., 2015).

The evaluation has not sufficiently highlighted the implementation aspects and the real obstacles on the ground faced by indigenous peoples due to regulatory inconsistencies, so the analysis does not adequately describe the legal and social dynamics at play. The evaluation mostly focuses on the conformity of regulations with the Constitution and other regulations. However, it has not integrated much of the sociological, political, and economic analysis that is important in the context of multidimensional indigenous peoples. In fact, understanding the socio-political context can enrich the argument for harmonising and strengthening norms.

There is insufficient consideration of how current regulations succeed or fail to guarantee the fundamental rights of indigenous peoples, including rights to land, natural resources, and cultural existence. There are additional procedural and administrative evaluations, so it does not provide a comprehensive picture of the law's influence on indigenous peoples. Although there are overlapping regulations, they do not critically examine the root causes of conflict and its impact in depth, for example, in the context of institutions and the role of local governments relative to the central government.

d. The Philosophical, Sociological, and Juridical Foundations of the Indigenous Peoples Bill

The philosophical foundation of the academic manuscript still contains ambiguity, particularly regarding the provision "as long as they are alive and in accordance with the development of society and the principles of the Republic of Indonesia," which is a condition for the recognition of indigenous peoples. Unclear boundaries and recognition criteria can make it difficult to protect the rights of indigenous peoples consistently. Although it affirms the recognition of indigenous peoples in the constitution and national law, its exploration of social justice, equal rights, and the protection of human rights as a philosophical foundation is not sufficiently in-depth. There is a risk that this foundation is only legal, without ensuring substantive protection of the rights and dignity of indigenous peoples, especially vulnerable groups. The sociological foundation focuses more on describing the social and cultural conditions of indigenous peoples, without critically examining the dynamics of socio-political forces that shape their position between the state and corporations. Aspects of power relations, marginalisation, and indigenous peoples' resistance to regulation have received

less in-depth analytical attention. The juridical foundation still tends to explain the overlap of norms and does not explore the impact of legal practice in the field. Of the three cornerstones, they are described as relatively separate aspects without strong analytical integration. In fact, the strength of the argument for drafting the bill will depend heavily on the synergy among the three foundations, which enrich and complement one another.

e. Range, Direction of Arrangement and Scope of Load Material

In academic texts, less emphasis is placed on recognising indigenous peoples as equal citizens under the law so that they can receive equal protection and access to their rights. This has the potential to weaken the position of indigenous peoples in the formulated arrangements. This bill has the potential to repeat the pattern of non-compliance with other regulations that have been in force, especially regarding territory and the use of natural resources. This is because it has not presented a concrete strategy to overcome the clash between regulations and the protection of customary territories when there is pressure for development or investment.

The lack of detailed arrangements for indigenous empowerment mechanisms, affirmative policies, and the protection of traditional rights in daily practice makes it seem overly formal and administrative (Safitri, Myrna, 2010). There is a lack of detailed provisions for the participation of indigenous peoples in policy formulation and in the supervision of the law's implementation (UNDP, 2022). In fact, the involvement of indigenous peoples is crucial to the effectiveness and legitimacy of policies. There are limitations to including socio-cultural and economic dimensions in the content, which are essential to the sustainability of indigenous peoples (Murray, 2012).

In short, the biggest gap lies in the incompleteness and lack of detail regarding the mechanisms and stages of recognition of indigenous peoples, harmonisation with other relevant legislation, dispute resolution mechanisms, and sustainable empowerment. Implementation details such as the formation of recognition committees, the role of local governments, and funding mechanisms are lacking.

2. *Cost Benefit Analysis:* Academic Manuscript of the Indigenous Peoples Bill

The academic text of the Indigenous Peoples Bill does not include a Cost-Benefit Analysis (CBA), so the data needed to assess it *is less readily available*. Cost-Benefit Analysis (CBA) can be used to assess whether a policy, project, or program will provide greater economic benefits than the costs incurred. So the author tries to provide an overview of using the CBA method to complete the academic text of the Indigenous Peoples Bill based on data, including(Matthew et al, 2000):

a. Identify the policy

The Indigenous Peoples Bill aims to provide recognition, protection, and empowerment of indigenous peoples for their rights of origin, customary territories, and natural resources in a sustainable manner. Based on BRWA data for 2024, approximately 28.2 million hectares of customary territories have been registered, but only 3.9 million hectares have formal legal recognition through local regulations and government decrees (BRWA News, 2024). So the CBA must identify all costs related to the implementation of the bill, such as administrative costs, training, community empowerment, dispute resolution mechanisms and all benefits that will be received such as improving the welfare of indigenous peoples, protecting land rights, reducing social conflicts, environmental sustainability and legal certainty (Boardman et al, 2022).

b. Determining Cost and Benefit

The cost incurred by the government to implement this bill consists of three main components. First, the cost of participatory mapping of customary territories, including surveys, verification, and digital map preparation. According to *a report by the Rights and Resources Initiative* (2015), the average cost of participatory mapping in Indonesia ranges from USD 2–5 per hectare. When added to administrative and training costs (about 25% additional), the total cost averages USD 4–6/ha. For the 3.9 million ha of customary territories ready for recognition, the estimated total cost is USD 23 million, or around Rp 370 billion (RRI, 2015). Second, institutional and social costs, including the establishment of the National Commission on Indigenous Peoples, regional committees, apparatus training, and dispute resolution mechanisms. Based on the assumption of the formation of a new institution, using data from the Ministry of Home Affairs in 2023, the initial

operational costs range from IDR 50–100 billion (Kemendagri, 2023). Third, the cost of socialisation and public consultation (FPIC), which includes community participation and conflict management, is estimated to reach 10% of the total cost (UN-REDD, 2013).

The main economic benefit comes from the value of ecosystem services that are maintained through the recognition of customary territories (Partha, 2021). Based on a study by the World Bank (2023) and *Frontiers in Environmental Science* (2025), the average value of Indonesia's tropical forest ecosystem services ranges from USD 300 to 700 per hectare per year, depending on forest conditions (TEEB, 2020). If we use a conservative value of USD 500/ha/year, the total annual benefit from the recognition of 3.9 million ha of customary forests amounts to USD 1.95 billion per year, or around Rp 31 trillion. In addition to direct economic benefits, this bill provides social benefits by reducing agrarian conflicts, thereby reducing litigation and law enforcement costs, improving welfare, and strengthening trust in the state (Murray, 2012). Environmental benefits are also significant, including the recognition of customary forests, which help reduce deforestation and carbon emissions. Based on data from the Ministry of Environment and Forestry (2024), customary forests have the potential to absorb up to 10 million tons of CO_2 per year with an average carbon price of USD 10/ton, with potential additional benefits of up to USD 100 million per year (MoEF, 2024).

c. Monetisation of Non-Market Value

Non-market values in the context of the Indigenous Peoples Bill include social justice, cultural identity, legal security, and environmental sustainability, which lack direct market value but can be estimated economically. One of the monetisation methods used is "willingness to accept" (WTA), which estimates the value of losses if social or environmental value is lost, and "replacement cost", which estimates the value of losses if social or environmental value is lost (Boardman et al., 2022). For example, agrarian conflicts cause huge social and economic costs.

According to Komnas HAM (National Inquiry, 2014), each customary land conflict causes an average of Rp 1.5-2 billion per case, including loss of income, legal costs, and social damage (KOMNAS HAM, 2014). With more than 150 active agrarian conflicts

involving indigenous peoples, the potential savings from reduced conflict can reach Rp 300 billion per year (Agrarian Reform Consortium, 2023).

In addition, the cultural and spiritual values of indigenous peoples also contribute indirectly to tradition-based tourism and national diversity. According to the Ministry of Tourism and Creative Economy (2023), tourism based on indigenous culture can contribute up to IDR 2.5 trillion per year to the regional economy, especially in Papua, Kalimantan, and Sulawesi (Kemenparekraf, 2023). So that the value of conflict reduction and improvements in social stability is calculated based on litigation cost savings and socio-economic losses due to conflict (UNDP, 2022).

d. Future Value

In CBA, long-term benefits need to be calculated at present value using a specific discount rate so that the results of the analysis remain objective and can be compared across several policy options (Adler et al., 1999). According to the Ministry of National Development Planning/Bappenas guidelines in 2022, the social discount rate for environmental and social projects ranges from 5–6% per year (Bappenas, 2022). Assuming an annual benefit of USD 1.95 billion for 20 years, and a 5% discount, the *Net Present Value* reaches around USD 24.3 billion (Kemendagri, 2023). Meanwhile, the implementation cost is *a one-time cost* (once incurred at the beginning), estimated at USD 23–30 million (Kemendagri, 2023). Thus, the present value of the benefits is much greater than the initial cost. Sensitivity analysis also shows that even if the annual benefit drops by 50% or the discount rises to 7%, NPV remains positive above USD 10 billion, so this policy remains economically viable in the long run (Kemendagri, 2023)

e. Economic Feasibility Calculation

The comparison of total benefits and costs shows that the net benefit of the Indigenous Peoples Bill is highly significant. The *Benefit-Cost Ratio (BCR)* reaches more than 1:800, meaning that every Rp 1 spent by the state produces economic and social benefits equivalent to Rp 800. A BCR value above 1 indicates that the project is economically viable and contributes to *sustainable welfare gains*, especially since this policy not only benefits the economy but also strengthens the legal and social structure (Boardman et al, 2022).

In terms of legal and institutional feasibility, this bill has a strong constitutional basis (Article 18B paragraph (2) and Article 28I paragraph (3) of the 1945 Constitution), and is supported by the Constitutional Court Decision No. 35/PUU-X/2012, which recognises customary forests as part of the territory of indigenous peoples, no longer state forests. (Arizona et al., 2015). Institutionally, implementation can be carried out by strengthening the roles of BRWA and local governments without forming large-scale new institutions, thereby ensuring fiscal efficiency.

CONCLUSION

Based on the results of the analysis of the feasibility of the regulation on the Academic Text of the Indigenous Peoples Bill, it can be concluded that the urgency of the establishment of the Indigenous Peoples Law has a strong philosophical, sociological, and juridical foundation or basis. However, the Academic Manuscript still has several weaknesses, particularly in strengthening empirical evidence, aligning with sectoral regulations, and formulating mechanisms for the recognition, protection, and empowerment of indigenous peoples. Thus, the substance of the Academic Manuscript needs to be refined again so that the process of formulating regulations not only meets the formal requirements of law and regulation but also provides legal certainty and effective protection for indigenous peoples.

The results of the analysis using the CBA method show that the implementation of regulations for the protection of indigenous peoples has a high level of feasibility because the benefits produced are greater than the costs incurred by the state. The calculation of economic, social, and environmental benefits shows that the recognition and protection of indigenous peoples has the potential to reduce agrarian conflicts, strengthen legal certainty, maintain environmental sustainability, and improve community welfare. Thus, the Indigenous Peoples Bill is both regulatively and economically feasible to continue as a legal instrument for the sustainable protection of indigenous peoples.

The need for a deep integration between philosophical, sociological and juridical foundations to produce a robust and continuous analysis. The substance of the regulation needs to be expanded to include mechanisms for the protection, empowerment, and active participation of indigenous peoples in the legislative and implementation processes. Harmonisation of sectoral regulations and clarity of recognition mechanisms for dispute resolution must be prioritised to realise justice and

legal certainty for indigenous peoples. The success of the implementation depends on the quality of the data and the analysis methods that must use empirical data and instruments such as RIA and CBA to make the results more measurable and rational.

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