

CONVENTIONAL BANK CONVERSION ANALYSIS TO SHARIA BANKS ACOORDING TO THE SERVICES AUTHORITY REGULATION

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Abstract

OJK (financial services authority) that issues a rule about conventional banks can make changes to business activities into Islamic banks, but not vice versa. Changes must obtain permission and fulfill the requirements. After permission is obtained, it must clearly state the word "Sharia" on the writing of the name, and the iB logo on the forms, documents, products, offices, and networks of Sharia Bank offices. The legal basis is: 1). Law Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking; 2). Law Number 21 of 2008 concerning Sharia Banking; 3). Financial Services Authority Regulation Number 64 / POJK.03 / 2016 Year 2016 concerning Changes in Conventional Bank Business Activities to Sharia Banks; 4). Financial Services Authority Circular Letter Number 2 / SEOJK.03 / 2017 Year 2017 concerning Changes in Business Activities of Conventional Commercial Banks to Islamic Commercial Banks. The mechanism described above must be carried out by conventional banks that want to change business activities into Islamic banks.

A. Introduction

The national banking system that accommodates the dual banking system concept provides a way for the development of Islamic banking in Indonesia. Growing Islamic banking is expected to be able to contribute more to the development of the national economy. The role of Islamic banking in the national banking system needs to be increased, among others, by increasing the number of office networks through the establishment of new Sharia Banks or opening up greater opportunities for the implementation of changes in business activities (conversion) of Conventional Banks to Sharia Banks. The effort to increase the network of Islamic banking offices is also intended to accommodate the growing demands of the community on the existence of Islamic banking and the interest of investors to enter the Islamic banking industry.¹

The national banking system adopted in Indonesia is a dual banking system (dual banking system). This system adheres to a concept that allows banks to conduct business activities conventionally or based on sharia principles. The dual banking

system began to apply in Indonesia since the amended Law No. 7 of 1992 concerning Banking becomes Law No. 10 of 1998. One of the contents of the amendment to the law expressly states that banks may operate based on sharia principles. The banking law also allows conventional banks to operate based on sharia principles by opening Islamic windows or Syrian Business Units (UUS). In this case, Indonesia followed the steps of Malaysia which had applied the dual banking system concept since 1983 with the enactment of the Islamic Banking Act (Islamic Banking Act).²

After the amendment to the banking law, the growth of Islamic banking in Indonesia increased significantly because banks could open Sharia Business Units. In addition, to increase the growth of Islamic banking, conventional banks are also allowed to convert their business activities based on sharia principles provided that they obtain permission from the Financial Services Authority (OJK) (see Articles 5, 6 & 7 of Act No. 21 of 2008 concerning Islamic Banking) The conversion of

¹ Explanation of the Financial Services Authority Regulation Number 64 / Pojk.03/2016 concerning Changes in Conventional Bank Business Activities to Sharia Banks, p. 1

² Abdul Rasyid, "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016 ". Binus University. (05-30-2017). <https://business-law.binus.ac.id/2017/05/31/k-Convert-kaktif-usaha-bank-konvensional-menjadi-bank-syariah-menurut-peraturan-ojk-no-64-tahun-2016/> , accessed July 29, 2019.

conventional banks into Islamic banks must be supported, but in its implementation, it must still pay attention to sound banking principles and prudential principles so that the conditions of Islamic banking are strong and consistent in applying sharia principles.³

The phenomenon of the development of the Sharia Banking industry in Indonesia after Law Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking took place so rapidly. This happened because in the era of Law Number 1998, the legal development policy of banks used a dual banking system, which was permitted by conventional commercial banks to provide services in sharia by first establishing a Sharia Business Unit (UUS).⁴

With the enactment of Law Number 21 of 2008 concerning Sharia Banking, there are a number of changes in provisions relating to institutional, management and business activities of Sharia Banks, including provisions concerning changes in business activities (conversion) of Conventional Banks to Sharia Banks. The implementation of changes in business activities (conversion) of Conventional

Banks to Sharia Banks must continue to pay attention to sound banking principles and prudential principles so that strong and consistent Islamic banking can be created in applying Sharia Principles.⁵

Law Number 21 of 2008 concerning Sharia Banking (Law on Sharia Banking) is a legal umbrella in the practice of Islamic banking in Indonesia, experts argue that the development of sharia banking will be faster and stronger in its existence after the enactment of the Sharia Banking Law. The Sharia Banking Act is expected to encourage the development and growth of Islamic banks in Indonesia more quickly and be able to play a role in promoting the national economy more broadly.⁶

B. Discussion

1. Spin of a Conventional Parent Bank

Spin-off is a new institution regulated in Law Number 40 of 2007 concerning Limited Liability Companies (Law on Limited Liability Companies) and Islamic Banking Law. In the Limited Liability Company

³ Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016".

⁴ Prima Intan Sari, Maryati Bachtiar and Abdul Ghafur. "Conventional Bank Conversion Into a Sharia Bank Judging from Positive Law and Islamic Law". Online Journal. (07-29-2019), p. 2

⁵ Explanation of the Financial Services Authority Regulation Number 64 / Pojk.03/2016 concerning Changes in Conventional Bank Business Activities to Sharia Banks, p. 1

⁶ Bank Indonesia, "Overview of Sharia Banking in Indonesia", www.bi.go.id, accessed July 29, 2019. See Sulasi Rongiyati. "Development of Islamic Banking Through the Implementation of the Obligation to Separate Sharia Business Units". State of Law, Vol. 6, No. 1, June 2015, 65-78, p. 66

Law, separation is defined as a legal act carried out by the company to separate the business which causes the entire assets and liabilities of the company to shift due to one company or more assets and liabilities.⁷ In the context of a bank, this spin-off institution is defined as the separation of business from one bank into two or more business entities, in accordance with the provisions of legislation.⁸

Article 135 paragraph (1) of the Limited Liability Company Law regulates that separation can be carried out by means of pure separation or impure separation. In paragraph (2), it is explained that pure separation causes the entire assets and liabilities of the company to switch because the law to two or more other companies that accept the transition and the company that carries out the separation ends because of the law. In this case, what is meant by switching is because the law is switched because of the general title, so that no transitional deed is needed. Whereas impure separation or commonly referred to as spin-off, results in part of the company's assets and liabilities switching because the law for one or more other companies that accepts

the transition and the company that carries out the separation remains.⁹ In impure separation does not result in the company that conducts the separation being disbanded because the assets transferred are only partially, so that the company can still run its business.¹⁰

Article 16 of the Sharia Banking Act states that a Sharia Business Unit can become a separate BUS after obtaining permission from BI. This provision shows that voluntarily conventional commercial banks that have provided sharia services through the Islamic windows mechanism by establishing a Sharia Business Unit at their head office can do the separation of the intended Sharia Business Unit to become a BUS which is an independent legal entity.¹¹

Furthermore Article 68 of the Sharia Banking Law requires conventional commercial banks that have fulfilled certain requirements to separate Sharia Business Units. 1) In the event that a Conventional Commercial Bank has a Sharia Business Unit whose asset value has reached at least 50% (fifty percent) of the total assets of the

⁷ Article 1 number 12 of Law Number 40 of 2007 concerning Limited Liability Companies

⁸ Article 1 number 32 of Act Number 21 of 2008 concerning Sharia Banking.

⁹ C.S.T. Kansil and Christine S.T. Kansil, the ins and outs of limited liability companies according to Law No. 40 of 2007, (Jakarta: Rineka Cipta, 2015), p. 99-100.

¹⁰ Gatot Supramono, Limited Liability Company Law (Jakarta: Djambat, 2016), p. 257

¹¹ Khotibul Umam, Increased Shariah Obedience through Spin-off, p. 610.

parent bank or 15 (fifteen) years from the enactment of this Act, then conventional commercial banks are required segregate the Sharia Business Unit into a Sharia Commercial Bank. 2) Further provisions regarding separation and sanctions for conventional commercial banks that do not carry out the separation as referred to in paragraph (1) shall be regulated by a Bank Indonesia Regulation.

The provisions of Article 68 of the Sharia Banking Act are then followed up by BI by establishing Bank Indonesia Regulation Number 11/10 / PBI / 2009 concerning Sharia Business Units as amended by PBI No. 15/14/2013 concerning Amendments to PBI Number 11/10 / PBI / 2009 concerning Sharia Business Units (PBI concerning Sharia Business Units). Article 1 number 14 PBI concerning Sharia Business Units provides the definition of spin-off as the separation of business from one conventional commercial bank into two business entities or more in accordance with the provisions of the applicable legislation. From this article it can be concluded that the laws and regulations in the field of limited liability companies are valid insofar as they

are not specifically regulated in the PBI concerning Sharia Business Units.¹²

2. The Conventional Bank Business Conversion Mechanism Becomes a Sharia Bank

The Financial Services Authority (OJK) regulation states that Conventional Banks can make changes to business activities into Islamic Banks. But Sharia Banks are prohibited from changing business activities into Conventional Banks. Changes in Conventional Bank business activities to Islamic Banks can be done:¹³ 1). Conventional Commercial Banks become Sharia Commercial Banks; 2). Rural Banks (BPR) become Sharia Rural Financing Banks (BPRS). To make changes to business activities for commercial banks and rural banks, they must obtain permits and meet requirements.¹⁴

The legal basis regarding Islamic banks refers to Law Number 7 of 1992 concerning Banking as amended by Act

¹² Sulasi Rongiyati. "Development of Islamic Banking Through the Implementation of the Obligation to Separate Sharia Business Units", p. 69

¹³ Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks". Online Law. Bung Pokrol's Business and Investment. (30-10-2017). <https://www.hukumonline.com/klinik/detail/ulasan/lt59cc5aa47db6f/prosedur-perganti-kaktif-usaha-bank-konvensional-menjadi-bank-syariah/>, accessed 29 July 2019, p. 5

¹⁴ Financial Services Authority Regulation Number 64 / Pojk.03/2016 concerning Changes in Conventional Bank Business Activities to Sharia Banks

Number 10 of 1998 concerning Amendments to Law Number 7 of 1992 concerning Banking (Law 10/1998) and Law Number 21 2008 concerning Sharia Banking (Law 21/2008). Sharia Banking is everything that concerns Sharia Banks and Sharia Business Units, including institutions, business activities, and ways and processes in carrying out their business activities.¹⁵

Sharia Banks are Banks that carry out their business activities based on Sharia Principles and according to their types consist of Sharia Commercial Banks and Sharia People Financing Banks.¹⁶ Sharia banking in carrying out its business activities based on Sharia Principles, economic democracy, and the principle of prudence.¹⁷

What is meant by "economic democracy" is Islamic economic activities that contain the values of justice, togetherness, equity, and benefit. Meanwhile, what is meant by "prudential principle" is a Bank management guideline

that must be adopted to realize a healthy, strong, and efficient banking in accordance with the provisions of legislation.¹⁸

Sharia Principles in Sharia Banking according to Law 10/1998, Sharia Principles are rules based on Islamic law between banks and other parties for depositing funds and / or financing business activities, or other activities declared in accordance with sharia, including financing based on profit sharing principles (mudharabah), financing based on the principle of equity participation (musharakah), the principle of buying and selling goods by obtaining profits (murabaha), or financing capital goods based on the principle of pure rent without choice (ijarah), or by the transfer of ownership of goods leased from the bank by other party (ijarah wa iqtina).¹⁹

Changes in Conventional Bank Business Activities into Sharia Banks, are in Article 2 paragraph (1) of the Financial Services Authority Regulation Number 64 / POJK.03 / 2016 Year 2016 concerning Changes in Conventional Bank Business Activities to Sharia Banks (OJK Regulation

¹⁵ Article 1 number 1 of Law 21/2008; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 5

¹⁶ Article 1 number 7 UU21/2008 jo. Article 18 of Law 21/2008; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 5

¹⁷ Article 2 of Law 21/2008; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 5

¹⁸ Explanation of Article 2 of Law 21/2008; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 5

¹⁹ Article 1 number 13 of Law 10/1998; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 6

64/2016) regulating that Banks Conventional can change business activities into a Sharia Bank. But Sharia Banks are prohibited from changing business activities into Conventional Banks.²⁰

Changes in Conventional Bank business activities to Islamic Banks can be done:²¹ 1) Conventional Commercial Banks become Sharia Commercial Banks; 2). Rural Banks (BPR) become Sharia Rural Financing Banks (BPRS). Changes in Conventional Bank business activities to Sharia Banks can only be done with the permission of the Financial Services Authority. This permit is granted in the form of permission to change business activities.²² Conversion of conventional commercial banks into sharia commercial banks must meet the requirements set by Bank Indonesia as stipulated in the Decree of Bank Indonesia Directors No. 32/33 / KEP / DIR dated 12 May 1999 concerning Commercial Banks.²³

²⁰ Article 3 OJK Regulation 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 6

²¹ Article 2 paragraph (2) OJK Regulations 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 6

²² Article 4 OJK Regulation 64/2016; see Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016".

²³ Wati Rahmi Ria. "Conversion of Conventional Commercial Banks to Islamic Commercial Banks

Plans for changes in Conventional Bank business activities to Sharia Banks must be included in the Conventional Bank business plan.²⁴ Conventional Banks that will make changes to business activities into Sharia Banks must:²⁵ 1). Adjust the articles of association; 2). Meet capital requirements; 3). Adjust the requirements of the Board of Directors and the Board of Commissioners; 3). Establish a Sharia Supervisory Board (Sharia Supervisory Board); and 4). Presents initial financial statements as a Sharia Bank. Adjustment of the articles of association refers to the Law governing Sharia Banking and other applicable laws and regulations.²⁶

Requirements to Become a Sharia Commercial Bank and Requirements to Become a Sharia Community Financing Bank. Conventional Commercial Banks that will make changes to business activities into Sharia Commercial Banks must fulfill the provisions concerning capital of Sharia

Based on Uu No. 10 of 1998 ". Law and Development. Number 3 Year XXXIV, (2004), 268-278, p. 271

²⁴ Article 5 OJK Regulation 64/2016; see Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016".

²⁵ Article 6 OJK Regulation 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 6

²⁶ Article 7 OJK Regulations 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 7

Commercial Banks. In addition, the Board of Directors and Board of Commissioners of Sharia Commercial Banks must comply with the provisions governing Sharia Commercial Banks.²⁷

Conventional Commercial Banks that will make changes to business activities into Sharia Commercial Banks must establish a Sharia Supervisory Board. Prospective members of the Sharia Supervisory Board must fulfill the requirements of the Sharia Supervisory Board as stipulated in the provisions concerning Sharia Commercial Banks.²⁸

Then the People's Credit Bank that will make changes to business activities into a Sharia Community Financing Bank must comply with the provisions concerning the capital of the Sharia Community Financing Bank. The Board of Directors and Board of Commissioners of the Sharia People's Financing Bank must comply with the provisions governing the Sharia Community Financing Bank. People's Credit Banks that will make changes to business activities to become Sharia People Financing Banks must establish a Sharia Supervisory Board.

²⁷ Article 8 and Article 9 of OJK Regulation 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 7

²⁸ Article 10 OJK Regulation 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 7

Prospective members of the Sharia Supervisory Board must meet the requirements of the Sharia Supervisory Board as stipulated in the provisions concerning the Sharia People Financing Bank.²⁹

Licensing Procedures for Changing Banking Business Activities must submit a request. Requests for permission to change business activities are submitted by Conventional Banks accompanied by among others:³⁰ 1). Mission and vision of changing business activities into Sharia Banks; 2). Draft amendment to articles of association; 3). Name and identity data of prospective Controlling Shareholders (PSP), prospective members of the Board of Directors, prospective members of the Board of Commissioners, and prospective members of the Sharia Supervisory Board; 4). Sharia Bank business plan; 5). Feasibility studies on market opportunities and economic potential; 6). Plans to settle customer rights and obligations. Amendments to the articles of association must be approved by the competent authority. Requests to the

²⁹ Article 11, Article 12, and Article 13 of OJK Regulation 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 7

³⁰ Article 14 paragraph (1) OJK Regulation 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 7

competent authority, which can be carried out together with the application for a license to change business activities.³¹

Conventional Banks that apply for permits to change business activities must provide an explanation of the overall plan for changing business activities into a Sharia Bank.³² Application for permission and / or submission of reports on changes in business activities submitted by the Financial Services Authority with the address of the Sharia Banking Department with copies to the Regional Office of the Financial Services Authority or the Office of the Financial Services Authority, to Conventional Commercial Banks or Sharia Commercial Banks headquartered in the Regional Office of the Regional Authority Financial Services or the Office of the Financial Services Authority.³³ Conventional Banks that have obtained permission to change business activities to become Sharia Banks must clearly state

them.³⁴ 1). The word "Sharia" in writing names; 2). IB logo on forms, certificates, products, offices and networks of Islamic Bank offices.

Conventional banks that have obtained permits to change business activities into Islamic banks must carry out business activities based on sharia principles no later than 60 (sixty) days after the permit is granted. If it does not carry out within the time specified above, the permit granted can be reviewed by the Financial Services Authority. Furthermore, no later than 10 days before carrying out its activities based on sharia principles, conventional banks must announce to the public both national and local media and report to the Financial Services Authority no later than 10 days after implementation.³⁵

Conventional banks that have obtained permits and have carried out business activities based on sharia principles may no longer change to conventional banks. The conventional bank must settle the rights and obligations of conventional business activities no later than 1 (one) year

³¹ Article 15 OJK Regulation 64/2016; see Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016 ".

³² Article 14 paragraph (2) OJK Regulations 64/2016; see Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 7

³³ Part II Circular of the Financial Services Authority Number 2 / SEOJK.03 / 2017 Year 2017 concerning Changes in the Business Activities of Conventional Commercial Banks to Islamic Commercial Banks

³⁴ Article 16 OJK Regulations 64/2016; see Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016 ".

³⁵ Article 17 OJK Regulation 64 of 2016; see Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016 ".

from the date the license for change of business activity is granted. But in certain conditions that cannot be avoided (force majeure), the settlement of rights and obligations can be extended.³⁶ In addition, it also stipulates sanctions for conventional banks that have obtained business change permits to become Islamic banks if some of the provisions described above are not carried out. For example, a conventional bank that has obtained a business change permit to become a sharia bank can be subject to a fine of Rp1 million per day and a maximum of Rp. 30 Million if not announcing to the public no later than 10 (ten) days before the date of implementation.³⁷

According to the author's analysis, Conventional Banks can change business activities into Islamic Banks. But Sharia Banks are prohibited from changing business activities into Conventional Banks. Changes in Conventional Bank business activities to Sharia Banks can be made by Conventional Commercial Banks to become Sharia Commercial Banks, or People's

Credit Banks to become Sharia People Financing Banks. To make changes to business activities for Commercial Banks and Rural Banks must obtain permits and meet requirements. Then Conventional Banks that have obtained permits to change business activities into Sharia Banks must clearly state the word "Sharia" in writing names, and iB logos on forms, certificates, products, offices and networks of Sharia Bank offices. The hierarchy as a legal basis is: 1). Law Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking; 2). Law Number 21 of 2008 concerning Sharia Banking; 3). Financial Services Authority Regulation Number 64 / POJK.03 / 2016 Year 2016 concerning Changes in Conventional Bank Business Activities to Sharia Banks; 4). Financial Services Authority Circular Number 2 / SEOJK.03 / 2017 Year 2017 concerning Changes in Business Activities of Conventional Commercial Banks to Islamic Commercial Banks.³⁸

The mechanism described above must be carried out by conventional banks that want to change business activities into

³⁶ Article 18 OJK Regulation 64 of 2016; see Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016 ".

³⁷ Article 17 (3) OJK Regulation No. 64 of 2016; see Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016 ".

³⁸ Novia Hasanah. "Procedure for Changing Conventional Bank Business Activities to Sharia Banks", p. 7

Islamic banks. The conversion effort must be supported always to increase the growth of Indonesian sharia banking. The amount of public interest in the existence of Islamic banking and foreign investors who want to invest in Indonesia must be accommodated with the growth of Islamic banking through increasing the network of Islamic banking offices in every region in Indonesia.³⁹

C. Conclusion

Conventional Banks can make changes to business activities into Islamic Banks. But Sharia Banks are prohibited from changing business activities into Conventional Banks. Changes in Conventional Bank business activities to Sharia Banks can be made by Conventional Commercial Banks to become Sharia Commercial Banks, or People's Credit Banks to become Sharia People Financing Banks. To make changes to business activities for Commercial Banks and Rural Banks must obtain permits and meet requirements. Then Conventional Banks that have obtained permits to change business activities into Sharia Banks must clearly state the word "Sharia" in writing names, and iB logos on forms, certificates, products,

offices and networks of Sharia Bank offices. The hierarchy as a legal basis is: 1). Law Number 7 of 1992 concerning Banking as amended by Act Number 10 of 1998 concerning Amendment to Law Number 7 of 1992 concerning Banking; 2). Law Number 21 of 2008 concerning Sharia Banking; 3). Financial Services Authority Regulation Number 64 / POJK.03 / 2016 Year 2016 concerning Changes in Conventional Bank Business Activities to Sharia Banks; 4). Financial Services Authority Circular Letter Number 2 / SEOJK.03 / 2017 Year 2017 concerning Changes in Business Activities of Conventional Commercial Banks to Islamic Commercial Banks. The mechanism described above must be carried out by conventional banks that want to change business activities into Islamic banks. The conversion effort must be supported always to increase the growth of Indonesian sharia banking. The amount of public interest in the existence of Islamic banking and foreign investors who want to invest in Indonesia must be accommodated with the growth of Islamic banking through increasing the network of Islamic banking offices in every region in Indonesia.

³⁹ Abdul Rasyid. "Conversion of Conventional Bank Business Activities into Sharia Banks According to Ojk Regulation No. 64 of 2016".

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