

The Legality of Gayo Customary Inheritance in the Perspective of Islamic Law

Zaini Bakri^{1*}, Fauzi Saleh², Analiansyah³

zainibakrigayolues@gmail.com, fauzisaleh@ar-raniry.ac.id, analiansyah@ar-raniry.ac.id

1. STIT Syekh Saman Al-Hasan Gayo Lues, Indonesia
2. Universitas Islam Negeri (UIN) Ar-Raniry Banda Aceh, Indonesia
3. Universitas Islam Negeri (UIN) Ar-Raniry Banda Aceh, Indonesia

Article Info

Received: 2024-04-24

Revised: 2024-05-30

Accepted: 2024-06-30

Keywords:

Inheritance Legality, Gayo Custom, Islamic Law.

Abstract

The practice of inheritance distribution in the Gayo community should align with the Fiqh Mawārit, but in reality, it has not fully adhered to it. There are still deviations found in the practice of inheritance distribution, such as the belief among some community members that juelen and angkap marriages can obstruct or reduce a person's share. Given these issues, the author is interested in examining the legality of Gayo customary inheritance from the perspective of Islamic law. To address this issue, a qualitative research approach is needed, with data obtained through interviews, observations, and documentation, analyzed using social interaction theory, cultural theory, Fiqh Mawārit theory, and Maqāshid al-Syari'ah. The research results indicate that the distribution of customary inheritance in Gayo is based on the type of marriage practiced in the community. Some aspects of Gayo customary inheritance are relevant to Islamic law, while others are practiced in a deviant manner.

I. Introduction

The practice of inheritance in Muslim communities should align with the science of farā'id. However, in reality, there are practices of inheritance distribution that do not conform to the provisions of farā'id. The conditions for inheritance distribution in farā'id include the death of the deceased, the existence of heirs, and the absence of any impediment to inheritance (Ibn Hajar, nd). The death of the deceased can be determined in two ways: hakiki (de facto) or hukmi (de jure). Hakiki death means the deceased has truly died and has been buried, while hukmi death applies to a missing person whose whereabouts are unknown and is declared dead by a judge's decision.

Heirs can be categorized as alive in two ways: hakiki, such as people who are truly alive among us, and hukmi, such as a fetus still in the womb. Inheritance can also be divided into two forms: tangible inheritance or rights, such as inheriting shares or royalties. Impediments to inheritance include murder, slavery, and religious differences.

The science of faraid also determines the specific portions for heirs, known as legitimate portie. The portions for Ashabul furūd al-muqaddarah are predetermined in the Qur'an and include six types: $\frac{1}{2}$ (half), $\frac{1}{4}$ (quarter), $\frac{1}{3}$ (one-third), $\frac{2}{3}$ (two-thirds), $\frac{1}{6}$ (one-sixth), and $\frac{1}{8}$ (one-eighth) (Baidawī, nd). These six portions in the resolution of inheritance law are called furūd muqaddarah.

The Gayo community is known for its plural approach to inheritance distribution, which can be divided into three forms: customary inheritance, fiqh-based inheritance, and inheritance based on the Compilation of Islamic Law. Customary inheritance distribution is heavily influenced by the type of marriage, and inheritance can be distributed starting from the marriage without waiting for the death of the deceased. The type of marriage also affects inheritance forms, such as juelen marriage, where a woman moves from her original clan to her husband's clan. As a result, a juelen daughter will receive her inheritance upon moving clans or mah беру, known in Gayo customs as tempah.

Therefore, when parents pass away, the daughter does not receive any inheritance. In Gayo customary inheritance, spouses do not inherit from each other because marriage does not create a mutual inheritance relationship. Their assets are separate, and assets acquired during the marriage belong to the husband, but the wife can use these assets as long as she remains in her husband's clan. If the wife leaves the husband's clan, she only takes her own belongings, while shared assets go to the husband's heirs or relatives. Similarly, if the wife passes away, her belongings (tempah) return to her family, and the husband does not inherit them.

The pluralism of inheritance laws in the Gayo community leads to legal

uncertainty, as some parties may choose the most advantageous legal model. For example, sons may prefer customary inheritance distribution because it gives them a larger share than daughters, allows for inheritance distribution delays, and permits sons to distribute inheritance according to their wishes without needing approval from other heirs, as there is no absolute portion (*legitime portie*) in Gayo customary inheritance. On the other hand, daughters prefer the Compilation of Islamic Law because it grants them shared assets and an absolute portion, which they feel is fairer.

II. Method

The research methodology used is a qualitative research method (Jahja 2023). This study employs four approaches: Anthropological, Anthropological, Fiqh Mawārist, and Maqāshid Syar'iiyyah approaches. The research is conducted only in parts of Gayo Lues district, Aceh Province, including Blangkejeren subdistrict, Putri Betung subdistrict, Rikit Gaib subdistrict, and Blangpegayon subdistrict. To easily and comprehensively obtain the desired data, researchers must build high trust and avoid impressions that could harm informants (Rianto, 2005). The presence of the researcher in the field must be openly known to the research subjects. Data collection techniques include observation, interviews, and documentation. Once all data is obtained, it is classified according to the field and research interests to answer the main research questions and categorized accordingly. The data will then be elaborated in a descriptive form. If the data is collected using recording devices, the researcher will listen to the recordings and transcribe them. The reporting will be conducted ethically, with the researcher only drawing conclusions based on the data source's intended meaning.

III. Result and Discussion

Inheritance According to Islamic Law

Scholars differ in formulating the definition of the term, but the goal is to ensure that each rightful heir receives their due inheritance based on Sharia. The term *al-Mīrats* refers to the rights of heirs to the deceased's estate due to inheritance causes, or the transfer of property from one person to another as a substitute. Commonly used terms besides *warisa* include *al-Faraidh*. According to Sharia, *al-Fara'idh* refers to the portions assigned to heirs by Islamic law (Sheikh Nīzhām, 1996).

The difference between *warist* and *tirkah* lies in that *warist* is calculated after deducting debts and funeral expenses, whereas *tirkah* refers to the total property of the deceased before such deductions (Ali As-Shabuni, 2001). The term *al-hukmu al-warists* is

not found in Arabic fiqh books; it is used in Indonesian literature. According to Amir Syarifuddin, in Indonesian law, the standard term is *kewarisan*, derived from "waris" with the prefix 'ke' and the suffix 'an'. The term *waris* can denote both the person inheriting (subject) and the process. The first meaning involves the individual receiving the inheritance, while the second refers to the transfer of property from the deceased to the living. This second meaning is used in the term *hukum kewarisan*. The word "hukum" initially means a set of binding rules, and "Islam" at the end signifies the basis of reference. Thus, Islamic inheritance law refers to a set of written regulations based on revelation and the Prophet's traditions concerning the transfer of property from the deceased to the living, binding all Muslims (Amir Syarifuddin, 2010).

Principles of Inheritance in Islam

Explicitly, no Qur'anic and Sunnah texts explain the principles of Islamic inheritance. However, these principles can be understood by examining the objectives of the Qur'anic texts. According to Amir Syarifuddin, Islamic inheritance law principles can be divided into five: (1) *ijbari* principle, (2) bilateral principle, (3) individual principle, (4) balanced justice principle, and (5) inheritance solely due to death.

The term *ijbari* etymologically means coercion, implying actions beyond one's will (Amir Syarifuddin, 2004). Islamic inheritance law is based on *ijbari*, meaning the division of inheritance involves compulsion not based on the deceased's will, unlike Western civil or customary inheritance law. This principle can be seen from several aspects: Transfer of property: Upon a person's death, their inheritance automatically transfers to their heirs. Based on this principle, neither the deceased nor the heirs can plan the transfer of the inheritance. Amount of inheritance: The portions of heirs from the deceased's estate are predetermined by Allah SWT's provisions and the Prophet's Sunnah. Thus, the deceased and heirs cannot determine these portions. Recipients of inheritance: The heirs entitled to the deceased's property are stipulated by the Qur'an and the Prophet's Sunnah, so neither the deceased nor the heirs can alter this, except as specified by the Qur'an and the Prophet's Sunnah (Jamāl, 2017).

The essence of this principle is that inheritance received by heirs from the deceased can be owned individually. Thus, each heir's share is not bound to other heirs, unlike in customary law where certain portions cannot be individually owned but are collectively owned. The bilateral principle means heirs receive inheritance from both paternal and maternal lines, and vice versa, the transfer of the deceased's estate involves both the paternal and maternal lineage.

From both the paternal and maternal sides, heirs receive inheritance in a balanced manner, meaning that the inheritance from both sides corresponds to the balance of responsibilities within the household. Both men and women have the right to receive inheritance from the deceased; however, the responsibilities differ. Men (public family) as the head of the household are responsible for the family's livelihood, while women as homemakers (domestic family) manage the household. Therefore, it is appropriate that the Qur'an stipulates that men receive two parts while women receive one part.

Analysis of Gayo Customary Inheritance Practices

Inheritance distribution in Gayo customs is influenced by the type of marriage. The Gayo community recognizes three types of marriage: *juelen*, *angkap*, and *murip ihe senang*. The kinship pattern in *juelen* marriage is patrilineal, *angkap* marriage is matrilineal, and *murip ihe senang* marriage is parental/bilateral. The conditions and reasons for mutual inheritance in *juelen* and *angkap* marriages require two things: blood relations and *belah* (clan) relations. Only male children from *anggo* marriages are entitled to inheritance; male children from *angkap* marriages are not entitled to inheritance as they have moved from their original *belah* to their wife's *belah*.

In *juelen* marriages, spouses do not inherit from each other. If the wife dies, all her brought-in property will be returned to her family first, and then her family will pass it on if she leaves behind children and descendants. Property acquired during the marriage or known as shared property does not exist in *juelen* marriages, so it is not distributed, as it is all considered the husband's property. Conversely, if the husband dies, all his property will be managed by the *juelen* wife but not inherited. As long as she remains in the husband's *belah*, she manages it, but if she leaves, the property will be distributed to the husband's children and descendants (Ibu 'Asyur, 1984).

In *angkap* marriages, spouses also do not inherit from each other. The husband's property, including his brought-in property, will be inherited by his children and descendants (Karimuddin Abdullah 2018). If the husband has no children, the property will be reclaimed by his family. The property acquired during the marriage belongs entirely to the wife, as *angkap* marriages do not recognize shared property, similar to *juelen* marriages. Conversely, if the wife dies, all her property will be managed by the husband as long as he remains in the wife's *belah*. If the husband leaves the wife's *belah*, the property will be inherited by the wife's children and descendants, and if she has no children, the property will be handed over to her parents or relatives.

Murip ihe senang marriages are free marriages that establish mutual inheritance

between husband and wife. Both brought-in property and shared property will be inherited jointly if either spouse dies, with sons and daughters having equal status, unlike in *juelen* and *angkap* marriages. Based on the above issues, the inheritance model will be analyzed using the *faraid* science approach, *al-Mashalah al-Mursalah*, and *fiqh* principles to classify relevant and irrelevant distribution systems.

Relevant inheritance practices with *faraid* science are those that do not consider the type of marriage in determining inheritance distribution. Customary marriage forms are not regulated in *fiqh*; *fiqh* only governs the conditions and pillars of marriage. As long as these are met, the marriage is valid and establishes a mutual inheritance relationship.

According to Ridwan Nurdin, *juelen* and *angkap* marriages are merely customary forms and do not affect the form of Islamic inheritance, as marriage and inheritance are discussed separately in *fiqh* (Interview Results, March 2024). According to Roby Efendi Batu Bara, the type of marriage does not affect the form of inheritance as inheritance is regulated in a separate chapter from *faraid* science (Interview Results, March 2024). The following discussion will explore the relevant and irrelevant inheritance forms based on *juelen*, *angkap*, and *murip ihe senang* marriages.

All relevant cases involve inheritance distribution fully based on *faraid* knowledge, starting from the process of determining heirs, the timing of distribution, and the portions each heir should receive. The types of marriages—*juelen*, *angkap*, or *murip ihe senang*—do not determine the form of inheritance.

Mrs. SJ married through *juelen* marriage. According to her male heirs, she was not entitled to inherit her parents' land because of her *juelen* marriage. However, being educated, having attended the PGA (Religious Teacher Education), and working as a non-civil servant Islamic religious instructor while actively participating in educational activities, she rejected the male heirs' decision that denied her inheritance rights. As a result of her objections, it was decided that all *juelen* daughters were entitled to inheritance based on *faraid* knowledge.

Mr. Jemi'an distributed the inheritance in a 2:1 ratio. All *juelen* children received their share of the inheritance. During a family meeting, his sisters stated that the parents' property essentially belonged to the sons and left the determination of their portions to the sons. However, Mr. Jemi'an insisted that the inheritance was the right of both sons and daughters according to the Qur'an. He argued that although Gayo customs might influence inheritance forms, this did not align with *faraid* knowledge (Interview Results, January 2024).

Mr. Haji Syahputra distributed inheritance according to *faraid* knowledge, not

distinguishing between juelen daughters and sons. He stated that each heir's rights were fixed according to the Qur'an (Interview Results, January 2024).

Tengku Tahmin Ja'far consulted with a colleague, a chief judge at the Mahkamah Syar'iyah Lhoksemawe, before distributing the inheritance. He distributed the inheritance between sons and daughters in a 2:1 ratio, without considering the type of marriage. He also distributed the estate of his deceased brother according to faraid knowledge, no longer adhering to Gayo customary inheritance laws (Interview Results, March 2024).

These cases are considered in accordance with Islamic law because, fundamentally, in Islamic law, the type of marriage does not affect the form of inheritance. Islam only requires a valid marriage to establish a mutual inheritance relationship between the deceased and the heirs. A valid marriage is one that fulfills the conditions and pillars of marriage. The type of marriage does not affect the form of inheritance. The inheritance rights of sons and daughters are stipulated in Q.S. An-Nisa' and the Sunnah of the Prophet Muhammad SAW, and thus neither the deceased nor the heirs are allowed to alter them, except as prescribed by the Qur'an and the Sunnah (Jamāl, 2017).

Partially Relevant Practices

Some practices are partially relevant because juelen and angkap marriages do not prevent sons and daughters from receiving inheritance, and spouses also inherit from each other. However, the portions given are still below the values that each heir should receive. Previous cases that are partially relevant include inheritance given to children and widows from juelen marriages. Juelen daughters received only token portions known as penosan/paraid. Additionally, some distributions adhered to faraid knowledge but were not implemented according to the applicable rules. Widows from juelen marriages received a portion of their husband's estate upon leaving the *belah*, with the value strictly determined by the husband's family. This differs from Gayo customary inheritance, which generally does not grant inheritance rights to widows from juelen marriages upon leaving the *belah*.

The inheritance distribution of the Inen Delot family was carried out in two stages. In the first stage, only the sons received their inheritance. In the second stage, the two juelen daughters received portions but only token amounts. Widows from juelen marriages, like the wife of Mr. Zulkifli's brother, received inheritance through customary law agreements between the wife's representatives and the husband's family. The customary agreement decided that the wife only received two buffaloes and IDR

5,000,000. The rest was controlled by Mr. Zulkifli, with all property to be handed over to the son once he came of age. During an anthrax outbreak in 2013, Mr. Zulkifli sold the inherited buffaloes for IDR 40,000,000 without informing his sister-in-law and her family. This led to a police report for embezzlement and fraud, but the case could not proceed to court because the sister-in-law was in an unregistered marriage, resulting in Mr. Zulkifli retaining full control of the property (Interview Results, March 2024).

In the case of Mr. Selamat's inheritance, his estate was controlled by his brother, while his wife only received a plot of land and a house. Vehicles and another house were entirely under the brother's control, with the reasoning that he would take care of and support the deceased's children. The estate would be used for their living and educational expenses. A widower from an *angkap* marriage who left his wife's *belah* received a portion of his wife's estate in the form of *penosan*, with its value determined through deliberations among the wife's heirs. Aman Jhon, a widower from an *angkap* marriage, initially lived in Bukut Village, Terangun District, before moving to Pasir Village, Tripe Jaya District. He was only given two buffaloes, with the rest of the estate controlled by his children (Interview Results, March 2024).

Adopted children of the *nasab* received only token amounts, as seen in the case of Aman Nuri from Gele Village, Blangkejeren District, where the amount was merely a token or *penosan*. Based on the above data, it is evident that *juelen* daughters received inheritance portions as *penosan* or *paraid*. This distribution is partially relevant to *faraid* knowledge since *juelen* daughters initially received no inheritance but later received some. Similarly, widows from *juelen* marriages received inheritance, but the amount was still below the *faraid* stipulations. Adopted *nasab* sons and widowers also received *penosan*. These cases indicate that the Gayo Lues community still adheres to Gayo customary inheritance laws, where marriage type influences inheritance distribution. However, customary rules are no longer fully followed, influenced by *faraid* knowledge. According to *faraid*, a marriage can only hinder someone from receiving inheritance if it is invalid. An invalid marriage in *fiqh* is one that does not fulfill the conditions and pillars of marriage.

Cases irrelevant to *fiqh* include inheritance distributions where *juelen* or *angkap* daughters did not receive inheritance due to the type of marriage. For instance, Inen Kari did not receive her inheritance from her brothers because she married through *juelen*. Mrs. Sirem, a resident of Putri Betung District, did not receive an inheritance for the same reason. Mr. Daud's family did not give inheritance to their two sisters who married through *juelen* (Interview Results, January 2024). Aman Jhon, who married through

angkap, did not receive an inheritance because he married outside the belah. According to Mr. Kadim, those who leave their belah or marry outside their belah are not entitled to inheritance (Interview Results, March 2024). These cases show a strong connection between marriage type and inheritance, with customary inheritance rules differing from faraid principles in determining inheritance rights, timing, and reasons for mutual inheritance.

Islamic Legal Perspective on Gayo Inheritance Practices

In Gayo customary inheritance, heirs are categorized into four priority groups: I) the deceased's descendants, II) the deceased's parents, III) the deceased's siblings and their descendants, and IV) the deceased's grandparents (Harrys Pratama, 2023). This differs from fiqh mawaris, which categorizes heirs based on marriage, blood relations, or blood relations leading to heirs: descendants (furu'u mayyit), ancestors (ushūlul mayyit), or collateral relatives (al-hawasyī). When the first group, the descendants, exist, the second group, the parents, do not inherit. When the second group exists, the third group, the siblings, do not inherit, and so on (Soerjono, 2005). This system contrasts with Islamic inheritance, which divides relatives into ushul, furu', and al-hawasyi. Furu' (descendants) do not prevent ushul (parents) from inheriting but can only prevent collateral relatives, such as siblings and their descendants, from inheriting.

Customary heirs do not recognize ashabul furud (fixed-share heirs) and ashabah (residual heirs). Ango sons and juelen daughters receive equal shares if they inherit simultaneously. If an angkap daughter is the sole heir, she becomes ashabah and inherits all her parents' estate. An angkap daughter or granddaughter can become ashabah, but an angkap son cannot. This differs from faraid, where ashabah heirs take the residual estate after fixed-share heirs take their portions. Ashabah is divided into three types: 1) ashabah bin nafsi, 2) ashabah bil ghair, and 3) ashabah ma'al ghair. An angkap son should become ashabah bin nafsi, while an angkap daughter cannot become ashabah because daughters become ashabah only when paired with sons or with the deceased's siblings in the absence of sons.

A single angkap daughter cannot inherit the entire estate according to classical fiqh. However, according to Al-Yasa' Abu Bakar, a daughter can inherit all after the parents, spouse, or remaining heirs take their shares, considering the meaning of kalalah in Surah An-Nisa' verse 176 and al-walad in Surah An-Nisa' verse 11. Kalalah in Surah An-Nisa' verse 176 means someone who dies leaving no children but has siblings. This meaning was shifted by the Companions to mean someone who dies without leaving a

father or a son. Caliph Abu Bakar adjusted the meaning of kalalah to the understanding of Arabs, but there is no view stating that an angkap daughter can prevent parents from inheriting.

Changes in inheritance law as regulated in Fiqh Mawārist due to customary law considerations can be made because inheritance is part of the chapter of transactions (mua'amalat). Texts related to inheritance provisions are not all definitive and conclusive (qat'ī tsubut and qat'ī dalālah), some are definitive in terms of establishment (qat'ī tsubut) and conjectural in terms of evidence (zhanni dalālah), or conjectural in terms of evidence that allow for new ijtiḥad so that it conforms to the prevailing customary law provisions. Provisions in texts that are definitive in terms of establishment and conclusive in terms of evidence cannot be ijtiḥad, but if there is an agreement among the heirs, it can be resolved through consensus deliberation among the heirs, even if the division exceeds the definitive provisions of the text because inheritance enters the realm of transactions, not part of worship.

In the form of inheritance application according to mashlahah considerations in the form of endowments considered as inheritance assets to juelen daughters when leaving the belah with a value equivalent to the expected inheritance assets, this decision must be made because in customary law, the transfer of assets begins from the occurrence of marriage, whereas in Fiqh Mawarist, the distribution begins only after the death of the testator. However, in the provisions of the texts, the distribution of inheritance begins from the death of the testator, but there is no prohibition against the continuation of inheritance assets before the death of the testator. In the Compilation of Islamic Law, it is affirmed that endowments can be considered as inheritance (Ismail Pane; 2022).

According to Al-Yasa' Abu Bakar, endowments given by parents to their children when they move belah according to the Gayo community are considered inheritance. The transfer of inheritance in Gayo custom can be carried out from the occurrence of marriage until the death of the heir; the Gayo community does not distinguish between endowments and inheritance. In fiqh, inheritance is only given after the death of the testator; there is no provision for giving before the death of the testator. However, it is necessary to investigate whether this difference is still relevant to Islamic Sharia or not, even though in fiqh, it appears to be different, so it is necessary to explore the opinions of scholars who allow it (Al-Yasa', 2012).

A similar view is conveyed by Ali Abu Bakar, according to him, juelen daughters do not receive a share of the parents' inheritance because they have received endowments equivalent in value to the inheritance assets, and sometimes exceeding the value of the

inheritance assets (Ali Abu Bakar, 2020).

The above views indicate that there has been acculturation between fiqh law and customary law; endowments considered as inheritance are essentially justified in fiqh mawarits. The giving of endowments while the testator is alive is known as a gift (hibah). The above endowment, as reviewed by Article 211 KHI, mentions that gifts from parents to their children can be considered as inheritance: "Gifts from parents to their children can be considered as inheritance" according to Soerjono Wignjodipuro, this article makes 'urf as a consideration because it is not found in the nash of the Qur'an or Hadith, which states that a gift can be considered as inheritance (Soerojo, 1982).

In Islamic law, a gift is given while alive, while inheritance is the transfer of assets after death. In customary law, the inheritance process is carried out while still alive. According to Soerjono Soekanto, the inheritance process has started while the parents are still alive; the process does not become sudden upon the death of the parents. Indeed, the death of the parents is a fundamental event in the inheritance process; however, it does not fundamentally affect the process of passing on the assets. Furthermore, according to Soepomo, in customary law, if someone who dies gives a portion of their assets during their lifetime to one or more of their children, then that gift is considered when the estate is divided after the person's death. If a child has received a gift from the testator (father or mother) during their lifetime, for example, land or jewelry sold to fund their education to higher education, on the other hand, the second child did not continue school because there was no cost and prioritized their siblings and cared for their parents when the parents passed away and left an inheritance. It is not fair if they are equal.

On the other hand, in customary regulations, the conditions for controlling land must meet two conditions, descent relationships and belah unity, the position of the land at that time is communal land, the genealogical-territorial unity model applied by the Gayo community is the genealogical-territorial unity model, a person who leaves belah is considered to not meet territorial or belah conditions. The land is also not worthless at that time.

IV. Conclusion

The practice of inheritance division in the Gayo community is greatly influenced by the type of marriage, juelen marriages have a patrilineal pattern, angkap marriages have a matrilineal pattern, and murip ihe senang marriages have a parental/bilateral pattern, as a result of these marriages, inheritance divisions in the Gayo community apply patrilineal, matrilineal, or parental/bilateral systems, but due to the influence of

development, the patrilineal inheritance model is the most widely applied by the Gayo community, but its application is not yet fully referenced to fiqh mawarist. Gayo customary inheritance is not entirely relevant to Islamic law; some are the result of compromises between customary law and Islamic law, even though the application form is slightly different from fiqh mawaris, its principles are the same, such as juelen daughters not inheriting because of leaving belah, due to the influence of Islamic law juelen daughters receive an endowment considered as inheritance, or juelen wives do not inherit their husband's assets but have the right to utilize the assets as long as they are still in the belah of their husband, but some are contrary to Islamic law such as juelen wives or angkap husbands do not have the right to inherit upon leaving the belah of their husband or wife, other irrelevant practices related to the amount of the heir's share are determined by the responsibility of the duty, or due to the testament of the parents, the delay in inheritance without the consent of the other heirs.

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