

Sharf on the actors of non-bank foreign exchange business (kupva bb) or money changer

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Abstract

The phenomenon of the problem in this study is that there are non-bank foreign exchange (KUPVA) or money changer business people who are not licensed or illegal which are feared to be misused for terrorism, drug transactions and money laundering. Therefore, money changer business people are obliged to make permits to the government for business continuity that is licensed and can be trusted by the public. The purpose of this research is to find out how the provisions of sharf for non-bank foreign exchange business activities. The research method used is descriptive qualitative. The results of the study explained that running a business as a non-bank foreign exchange business activity is permitted as long as it must comply with the provisions set by the government and the conditions stipulated by the MUI fatwa council, including taking care of permits, not for speculation (chancy), their transaction needs or just in case (deposits), if the transaction is carried out on a similar currency then the value must be the same and in cash (at-taqabudh) if different types must be made with the exchange rate that applies when the transaction is carried out and cash.

Keywords: Money changer; sharf

INTRODUCTION

International relations require a medium of exchange, today is a form of money. Currency, in essence, only applies to the territorial juridical boundary of a country. The rupiah only applies in Indonesian juridical areas; Malaysian ringgit only applies in Malaysian juridical areas; the US dollar only applies in American juridical areas, and so on with other countries' currencies. Thus, if Indonesians want to do transactions in America, automatically, they need US dollars (because the rupiah in essence does not apply there). Vice versa, if Americans, Malaysians, Singaporeans, and other nations go to Indonesia, then they also need rupiah.

In Islam, foreign exchange transactions are known as Al-Sharf. Indonesia is a country whose population is the majority of Muslims, so many of the Indonesian people want to carry out sharf transactions safely and in accordance with Islamic sharia. Based on data that is reported by the daily merdeka.com news, it shows that the Indonesian Bank of West Java noted there were 227 illegal (unregistered) money changers spread across districts and cities in West Java. Head of the West Java BI Advisory and Economic Development Group Ismet Inono said "7 October 2016 which was licensed only 26 organizers" (Rosadi, 2017).

Unlicensed money changer is done by gold shop entrepreneurs, street vendors (PKL), and hospitality. Most of them also do not know the licensing rules regarding KUPVA-BB, even though the government imposed strict regulations on money changer business with the aim of preventing crimes such as drug trafficking or terrorism to money laundering. It causes foreign exchange entrepreneurs can be accused of being involved if they serve consumers for potentially criminal purposes.

The following licensed money changer data in the city of Bandung per March 31 2017:

Table 1. Licensed money changer in west java

No.	Nama KUPVA BB	Kota /Kab
1	PT Aria Jaya Lestari	Bandung
2	PT.Daya Mutiara Asia	Bandung
3	PT.Dwipa Mulia	Bandung
4	PT. Golden Money Changer	Bandung
5	PT. Swarnadwipa Inti Prima	Bandung
6	PT. Restu valuta Mas	Bandung
7	Jara Sakurai Trivanza Mandiri	Bandung
8	PT. Untung Prima Valasindo	Bandung
9	PT. Nirmala Malsa Prima	Sukabumi
10	PT. Central Aneka Saudara	Sukabumi
11	PT. Cendrawasih Prima Valasindo	Sukabumi
12	PT. Famili Valas Jaya.	Sukabumi
13	PT. Das Investama	Cianjur
14	PT. Beringin Prima valasindo	Cianjur
15	PT. Ibu Kota Valasindo	Cianjur
16	PT. Shandiya Valuta Mandiri	Purwakarta
17	PT. Valuta Centra Asia	Purwakarta
18	PT. Tjantik Elnus Valas.	Purwakarta
19	PT. Surya Langgeng Valutama	Subang
20	PT. Grade Atha Mandiri	Cirebon
21	PT. Cahaya Pelangi	Cirebon
22	PT. Restu valuta Mas	Cirebon
23	PT. Cangkol Mitra Arhta	Cirebon
24	PT. Kharisma Inti Mandiri	Cirebon
25	Pr. Agung Santosa Sejahtera,	Cirebon
26	PT. Tiawan Valas	Cirebon
27	PT. Ratu Pelangi valasindo,	Indramayu
28	PT. Prima Jaya Artha,	Indramayu
29	PT. Prima Arta Persada	Indramayu
30	PT. Makmur Valasindo	Indramayu
31	PT. Bahagia Money Changer	Indramayu

No.	Nama KUPVA BB	Kota /Kab
32	PT.Rizqi Wali Amarta	Ciamis
33	PT Nukita Wisata Pengandaran	Pangandaran

Based on table 1, it is stated that there are only 33 licensed money changers in West Java province compared to the number of unlicensed money hanger, of course this violates the provisions of government regulations.

The previous relevant research that supports this research is: research conducted by Qusthoniah, (2014), foreign exchange transactions according to Islamic law, the conclusion of this study is that not all types of foreign exchange transactions can be justified by Islamic law. The only thing that can be accepted in the practice of muamalah Islam is spot foreign exchange transactions. Meanwhile, the other two types - forward and swap - contain weaknesses. Forward and swap transactions are only justified in an emergency because the original law is illegal. However, it is very likely that this emergency will never occur. This is due to the urgency of foreign exchange transactions in relation to international relations that can be fulfilled by spot transactions. Thus, there is no strong reason to justify this forward and swap transaction. (Qusthoniah, 2014).

Liadatun Mas'ulah (2016), Implementation of Currency Buying and Selling (al-sharf) in the Bank Syariah Mandiri Pati Branch. The conclusion of this study is that in principle foreign exchange trading is in line with the principle of sharf. It can be seen that a) The mechanism of buying and selling currencies in the Bank Syariah Mandiri Pati Branch is: the bank can act both of the party receiving the exchange and the party that exchanges money from or to the customer. Money exchange transactions not for type currencies (foreign currencies) can only be made in the form of spots. In the event that a money exchange transaction is carried out on a different type of currency in a money changer activity, the transaction must be carried out at the time the transaction is carried out. b) Exchange rates are the price of one country's currency expressed in another country's currency (Mas'ulah, 2016).

Amanatullah A, (2017), Analysis of the Sharia Foreign Exchange Exchange System (Al Sharf) at Bank Syariah Mandiri Makassar. The conclusions of this study are 1) Foreign exchange services at Bank Syariah Mandiri use a sharf contract that is intended in individuals and business entities with types of bank notes and telegraphic transfer transactions in the form of spot transactions. 2) Accounting treatment for foreign exchange exchange transactions in accordance with the provisions of PAPSII 2013 using the multi currency method. 3) The foreign exchange exchange services are provided by BSM are in accordance with sharia principles because they have fulfilled the MUI DSN fatwa No.28 / DSN-MUI / II / 2002 concerning Currency Sale and Purchase (Al Sharf) (Amanatullah, 2017).

Based on pre-survey research conducted incidentally to 20 respondents who were exchanging money at the money changer, from the answers of 20 respondents said it was preferable to exchange money at a money changer compared to the bank because of transaction speed, ease of exchange, and competitive prices or cheaper than bank exchange rate.

Through qualitative descriptive research, this study will describe the sharf provisions for non-bank foreign exchange business activities. Related to the future implications of this study is that business money changers are obliged to permit the government to support businesses that are licensed and can be trusted by the public.

Sharf

In language, sharf means ziyadah (additional). While, in the terms of sharf means that buying and selling currencies with currencies, both the same and not the same, such as buying and selling gold with gold, silver with silver, or gold with silver. According to 'Abd al-Rahman al-Juzayri sharf is buying and selling gold with gold, silver with silver, or buying one of them with the others. This Sharf is part of buying and selling (bay ') in general, so that the pillars of buying and selling are enforced on sharf. (Janwari, 2015).

According to Dahlan Siamat, the foreign exchange market is a mechanism by which people can transfer purchasing power between countries, obtain or provide credit for international trade transactions, and minimize the possibility of risk of loss due to fluctuations in the exchange rate of a currency (Dahlan Siamat, 1999).

Foreign exchange in English is known as a money changer or foreign exchange, in Arabic it is often referred to as the word al-sharf. In the dictionary of al-Munjid fi al-Lughah it is mentioned that alsharf means selling money with other money. Language, exchange foreign currency or al-sharf means Al-Ziyadah (additional), exchange, avoidance, or buying and selling transactions. (Hasan, 2005).

From the definitions stated above it can be understood that the foreign exchange market is the place where an activity takes place specifically to conduct currency transactions of various countries for the sake of relations between countries or internationally. It is said that the interests of interstate or international relations are because foreign exchange transactions will become a necessity if between countries engage in interactions, among in the form of trade, tourism, and others.

There are several conditions that must exist in the sale and purchase of currency (foreign exchange). The conditions are mentioned by the scholars in the exchange of gold and silver, which also applies to the exchange of currency that existed in the later times, namely in the present. In exchange of foreign currencies which have 4 (four) harmony, Al-Jazairi (2003):

Handover before iftirak (parting); Al-Tamatsul (equally); Payment by Cash; Does Not Contain the Khiyar Agreement

In the Sharf contract, it is required that there be a handover of the currency that is exchanged before physically one of the parties who leaves the other party. This requirement is set to avoid riba 'al-nasi'ah. In addition, in the Sharf contract, a tamastul (of the same type) is required. Buying and selling similar currencies, gold with gold or silver with silver is allowed based on syara 'if the value is the same. If the currency exchanged is different, then there must be conformity in the value of its quality. As in the first condition, this condition is also stipulated so that the sharf contract is protected from the element of usury (Janwari, 2015).

The sharf contract is also not known to be khiyar syarth, so it is not permissible in the sharf contract to have khiya rights, both of two parties who carry out the contract or for one of them. It is because cash in the sharf contract is one of the conditions. While, khiyar syarth is one of the things that can be prevent the permanent ownership or contract perfection. Therefore, if the sharf contract is required khiyar, then the sharf contract becomes a facade.

The Sharf contract must be made in cash and there can be no suspension in the delivery of the currency traded. If the Sharf contract has an opportunity to suspend the submission of the contract object, then the Sharf contract can be categorized in the facade contract. This is because cash is a certainty that must be done before the two parties are separated.

In the context of law, in Indonesia there has been found several products related to this Sharf, both in the form of legislation and in the form of fatwas issued by the National Sharia Council of the Indonesian Ulema Council. In Article 20 of Law Number 21 Year 2000 concerning Sharia Banking, it is mentioned that one of the sharia banking business activities, Sharia Commercial Bank and Sharia Business Unit is conducting foreign exchange activities based on sharia principles. The contract that can be used in conducting this business activity is the sharf contract (Janwari, 2015).

The second legal product concerning this Sharf is stated in a Bank Indonesia Regulation, namely PBI Number 6/24 / PBI / 2004 concerning Commercial Banks who's Business Activities are based on Sharia Principles. In article 37 paragraph 1 point a PBI Number 7/24 / PBI / 2004 stated that Islamic banks can also carry out activities in foreign currencies based on a sharf contract. In its business activities Commercial Banks have the right to exchange currencies between a country's currency and another country's currency. The contract used in this business activity is a sharf contract.

This sharf legal product is mostly contained in the form of fatwa is issued by the National Sharia Council of the Indonesian Ulema Council. The MUI DSN fatwa related to the Sharf was in the MUI DSN Fatwa Number 28 / DSN-MUI / III / 2002 concerning Currency Sale and Purchase (Sharf). In the fatwa it was stated that the Sharf is a buying and selling transaction for both currencies and different types of currencies.

In the fatwa also stated that the sale and purchase of this currency in principle is permissible under the following conditions:

Not for speculation (chancy); there is a need for transactions or just in case (deposits); If the transaction is made on a similar currency, the value must be the same and in cash (taqabudh) and if

different types must be made with the exchange rate that applies when the transaction is carried out and in cash.

Sharf implementation in Islamic financial institutions is currently only visible in Islamic banking. Sharf in Islamic banking is one of the banking products in channeling funds. Banks in this context act as bai '(sellers) and customers act as mustari (buyers). Because Islamic banking and bank customers are required to apply sharia principles, Sharf implementing must fulfill legal requirements in accordance with MUI DSN fatwa Number 28 / DSN-MUI / III / 2002 concerning the sale and purchase of currencies (Sharf) Janwari, (2015).

Sharf foundation on nash and hadith:

God's Word in QS. al-Baqarah (2): 275: And Allah has justified buying and selling and prohibiting usury.

The hadith of the Prophet narrated by al-Baihaqi and Ibn Majah from Abu Sa'id al-Khudri: Prophet Muhammad SAW. Said: Indeed, buying and selling can only be done on the basis of willingness (between the two parties).

The hadith of the Prophet, Muslim, Abu Daud, Tirmidhi, Nasa, and Ibn Majah, with Muslim texts from Baadah bin Shamit, the Prophet said: (Sell) gold with gold, silver with silver, wheat with wheat, sya'ir with sya 'ir, dates with dates, and salt with salt (with the necessary conditions) the same and similar and in cash. If the type is different, sell as you wish if done in cash.

The hadith of the Muslim history of the Prophet, Tirmidhi, Nasa, Abu Dawud, Ibn Majah, and Ahmad, from Umar bin Khattab, the Messenger of Allah said: (Buying and selling) gold with silver is usury except (done) in cash.

The hadith of the Muslim history of the Prophet Sa'id al-Khudri, the Prophet said: Do not sell gold with gold except the same (value) and do not add part of the other, do not sell silver with silver except the value (value) and do not add part of the others, and do not sell gold and silver that are not cash in cash.

Hadith of the Muslim Prophet from Bara 'bin Azib and Zaid bin Arqam: Prophet Muhammad SAW. prohibit selling silver with gold in receivables (not cash).

Prophetic traditions of Tirmidhi history from Amr bin Auf: Agreements can be made among Muslims, except agreements that forbid the lawful or justify the forbidden; and the Muslims are bound by their conditions except the conditions that forbid the lawful or justify the forbidden.

The Prophet also said in H.R. Imam Bukhari: Meaning: "Do not sell gold with gold, unless balanced, and do not sell silver with silver unless balanced. Sell gold with silver or silver with gold as you like. "H.R. Imam Bukhari."

Ijma. The agreed ulama (ijma') that the al-sharf contract is given with certain conditions.

Terms of buying and selling currencies (foreign exchange)

As for the conditions mentioned by the scholars in the exchange of gold and silver which also applies to the exchange of currency that existed in the later times, namely in the present. In exchange of foreign currencies which have 4 (four) harmony (Al-Jazairi, 2003):

Handover before iftirak (parting); Al-Tamatsul (equally); Payment by cash; and does not contain the khiyar agreement

Use of foreign exchange rate business activities (kupva bb)

Organizer of Non-Bank KUPVA

Non-Bank KUPVA Is a company incorporated as a Limited Liability Company, not a bank whose purpose and objective is to conduct business activities for buying and selling UKA and purchasing Flight Checks that have fulfilled the terms and conditions in this Bank Indonesia Regulation. Based on Article 2 paragraph 1 of Bank Indonesia Regulation Number 18/20 / PBI / 2016 concerning Non-Bank Foreign Exchange Business Activities.

Business activities of non-bank kupva organizers

Based on Bank Indonesia Circular Number 18/42/DKSP Year 2016 concerning Non-Bank Foreign Exchange Business Activities ("SEBI 18/2016"), the Operator of Non-Bank KUPVA is a legal entity that is a non-bank Limited Liability Company conducting business activities including:

Exchange activities carried out by the mechanism of selling and buying Foreign Banknotes (UKA); purchasing a flight check; and other business activities that have relevance to the implementation of KUPVA as long as they are stipulated in Bank Indonesia regulations.

Every transaction from KUPVA must always be recorded in transaction record documents in accordance with applicable laws and regulations.

Prohibition for organizers of non-bank KUPVA

Non-bank KUPVA organizers are prohibited:

Acting as a Pelawat Check agent;

Conducting margin trade, spot, forward, swap and other derivative transactions both for the benefit of the Customer and the interests of the Non-Bank KUPVA Operator;

Conducting UKA sale and purchase transactions and purchase of flight checks with non-bank KUPVA operators who do not have a license from Bank Indonesia;

Conducting activities for conducting fund transfers; and

Conducting other business activities (in the form of gold buying and selling activities).

In addition to the above restrictions, the Non-Bank KUPVA Operator is prohibited:

Becoming the owner of an unlicensed KUPVA organizer;

Cooperating with unlicensed KUPVA organizers; and

Conducting business activities through unlicensed KUPVA organizers.

This prohibition applies to Directors, Board of Commissioners, and / or Non-Bank KUPVA Operator Shareholders.

Permit for organizing KUPVA

Non-bank business entities that will conduct business activities as Non-Bank KUPVA Organizers must first obtain permission from Bank Indonesia. So, to be able to run a business as a Non-Bank KUPVA Operator, you must obtain a permit/approval from Bank Indonesia first. For Non-Bank KUPVA Operators who carry out business activities without obtaining prior approval/permission from Bank Indonesia, they may be subject to sanctions as follows:

Written warning;

Obligation to pay;

Termination of business activities;

Sanctions for terminating business activities apply to:

UKA sale and purchase activities;

Purchasing a Flight Check; and/or

Other business activities that are related to the implementation of foreign exchange business activities.

Revocation of permission.

In implementing administrative sanctions, Bank Indonesia considers:

Level of violation;

The consequences of:

Consumer protection aspects; and/or

Anti-money laundering and prevention of terrorism funding; and/or

Other factors

In addition to maintaining the stability of the Rupiah exchange rate, the regulation on licensing of Non-Bank KUPVA Organizers by Bank Indonesia also aims to protect the public in general. The community can be harmed by the Non-Bank KUPVA Operator who does not have a license from Bank Indonesia because the KUPVA Operator of the Unlicensed Bank can become a means of distributing counterfeit foreign exchange. In addition, the KUPVA Organizer Not an Unlicensed Bank can also be used as a means of other crimes such as terrorism funding.

Non-bank foreign exchange trading is a real money trading activity that exists, grows, and develops in people's lives, which is a vital trading institution in the implementation of practical, fast, convenient and efficient trade in tourism services, positioned as a very money-changing media. It is

needed by tourists and the community; it actually provides a concrete answer to the needs of the community for money changers that are fast, practical, convenient and efficient.

Terms and Licensing of Money Changer Services

Non-Bank foreign exchange traders who will conduct business activities as Non-Bank KUPVA Organizers must first obtain permission from Bank Indonesia. Where to obtain a permit from Bank Indonesia, a non-bank business entity must fulfill the following requirements:

Legal entity Limited Liability Company whose entire shares are owned by:
Indonesian citizens; and/or

Business entities whose entire shares are owned by Indonesian citizens;

Include in the articles of association of the company that the purpose and objective of the company is to conduct UKA trading activities and purchase of Flight Checks;

Fulfill the amount of paid-in capital stipulated by Bank Indonesia; and

Paid-up capital does not originate from and/or for the purpose of money laundering.

Non-bank KUPVA, too, must register a permission with the Regional Government as the issuer of foreign exchange trading licenses through the Investment and Licensing Agency. As foreign exchange traders must register their permits to the Investment and Licensing Agency which includes:

Trading Business License (SIUP);

Business Place Permit (SITU);

Company Registration Number (TDP);

Disturbance Permit (HO).

METHODS

This research uses descriptive method and also supported by qualitative approach to describe briefly about the sharf for non-bank foreign exchange business activities. Primary and secondary data sources are derived from the number of literatures that are closely related to the research objective. The data collection technique is obtained from book review, documentation, observation, and interview with the informant regarding on the main topic of this research. The data analysis technique consists of compilation, clasification, and verivication of the data that done by the combination between deductive and inductive approach until the formulation of conclusion.

RESULT AND DISCUSSION

Halal haram types of foreign exchange transactions

Spot Transactions, namely the purchase and sale of foreign exchange transactions for delivery at that time (over the counter) or settlement no later than two days. The law is permissible, because it is considered cash, while the time of two days is considered as a process of resolution that cannot be avoided (مِنْهُ بَدَلًا مِّمَّا) and is an international transaction.

Forward Transactions, which are foreign exchange purchase and sale transactions whose value is set at the present time and are applied for the future, between 2 x 24 hours up to one year. The law is forbidden, because the price used is the agreed price (muwa'adah) and the delivery is carried out later, even though the price at the time of delivery is not necessarily the same as the agreed value, except in the form of a forward agreement for unavoidable needs (lil hajah).

Swap transactions, namely a contract of purchase or sale of foreign exchange at a spot price combined with a purchase between foreign exchange sales equal to the forward price. The law is haraam, because it contains elements of maisir (speculation).

Option Transactions, namely contracts to obtain rights in the framework of buying or the right to sell that are not required to be carried out on a number of units of foreign exchange at a certain price and time period or date. The law is haraam, because it contains elements of maisir (speculation).

Sharia board provisions regarding sharf

Based on the fatwa of the national syari'ah council no: 28 / dsn-mui / iii / 2002 about buying and selling currencies (al-sharf) has the following conditions. Currency buying and selling transactions may in principle be as follows:

Not for speculation (chancy);

There is a need for transactions or just in case (deposits);

If the transaction is made on a similar currency, the value must be the same and in cash (at-taqabudh).

If different types of currency, it must be made with the exchange rate that applies when the transaction is made and in cash.

Opinion of 4 madzhab

Imam Hanafi and Imam Shafi'i argue that buying and selling of currencies occurs in cash as long as both parties have not separated, either the receipt is immediate or slow. So the acceptance can be with a certain time agreement, Syafi'i and Hanafi argue that the grace period can be delayed as long as both parties have not left the majlis.

Imam Malik argued if acceptance of the Majlis was late, then buying and selling was canceled, even though the two parties had not separated. It is because he doesn't like the promises in it. While, Malik has no grace period between the contract occurrence and the handover of the goods.

Judgment expert

Some Expert judgments about sharf on business players of Non-Bank Foreign Exchange Business Activities (KUPVA BB) or "Money Changer":

Ustadz Bachtiar Nasir concluded, it is permissible for the law to open a money changer business while observing and implementing the conditions set in Islamic Shari'a, the purpose of which is not to fall into the act of usury which is forbidden and hated by Allah.

Ustadz Muhsinin Fauzi. According to Ustadz Muhsinin, there are two things that must be noted in the exchange of foreign currencies. First, it must be done in cash. Second, if the exchange of money for different currencies can take advantage, then for the same currency then absolutely not to take advantage.

The coach of the Indonesian Fiqh House, Ustadz Ahmad Sarwat, added, the basic law in the business of exchanging currencies is halal. So, working at a legal exchange place is also lawful. When fulfilling sharia rules and not doing usury practices. In this currency exchange problem, which is forbidden is the exchange between common currencies. Meanwhile, what happens in a money changer is the exchange of two different currencies. So that in this case it does not include prohibited transactions.

Sheikh Faishal Maulawi, a sharia judge in Lebanon said, the business of exchanging currencies is lawful, when exchanged are two different types of currencies. The example like exchanging US dollars with the French franc, or between British pounds and the Saudi Riyal, or between Kuwaiti dinars and Lebanese lira, and others. Thus, such transactions are called sharf or foreign exchange. And this form of business is legally enforced by all scholars. Moreover, considering its importance for transactions in the world community. However, if it is exchanged only between currencies, then the law is prohibited. So, you cannot exchange German mark currency with German mark either except with the same value. It is unlawful if there are differences in values, whether more or less. If that happens, then the law is usury that is forbidden. In this condition, it is just a loan that is justified if returned at maturity; there should be no excess or lack.

Ulama agree with cash conditions, but they differ about time which limits this understanding of cash.

Contemporary scholars, such as Yusuf al-Qaradawi, in terms of buying and selling foreign currency which are not made in cash, say it is not allowed. Furthermore, he said that it was illegal to buy and sell money with a deferral system, even if it had to be done in cash at the transaction site. It's just that the criteria for running something according to its own size. In this case, according to Yusuf al-Qaradawi, syara 'has surrendered the measure to the customs that apply in a society. However, this cash reality also follows emergency law which is measured according to its size. It is precisely that Muslims are not permitted to sell what they buy except after first receiving the item according to the prevailing customs.

CONCLUSION

Referring to the description above, we can draw a red thread that running a business as a non-bank foreign exchange business activity is permitted as long as it must be comply with the provisions set by the government and the conditions stipulated by the MUI fatwa council, including taking care of permits, not for speculation (chancy), there transaction needs or just in case (deposits), if the transaction is carried out on a similar currency then the value must be the same and in cash (at-taqabudh) if different types must be made with the exchange rate that applies when the transaction is carried out and cash. Related to the future implications of this study is that business money changers are obliged to permit the government to support businesses that are licensed and can be trusted by the public. Limitations of the study is research subjects in a limited area in the province of West Java, so the results can not be generalized to a large group of subjects and regions so that for future research it is expected to use a wider area.

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