



Reconstruction of land rights regulation in the province of the Batam city of Riau Province based on justice value

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Abstract

Batam city in Riau province is a city that has developed quite massively in recent years, however, due to the implementation of regional autonomy, land use in this city has become quite problematic. This is what makes the writer interested in examining it in a study with the main problem What are the weaknesses that arise in the implementation of the Reconstruction of Land Rights Ownership Regulations in the Riau Archipelago Province based on the Value of Justice and What is the ideal Reconstruction for it. The research method in this research is normative juridical with the approach of library materials or secondary data. The results of this study indicate the need for legal exceptions to land and building ownership of Batam City Land Rights, especially between residential houses and industrial and office buildings. The Legal Culture of Batam City Development is no longer in accordance with the initial concept, so it is necessary to change the legal rules that are no longer appropriate, namely Article 6 of Presidential Decree No. 41 of 1973 which states that the right to manage land or the entire land area in Batam City is handed over to Batam City. the status of "management rights" from the central government to the Batam Authority (now the Batam Concession Agency). Therefore, the legal reconstruction needed is in this article, and it needs to be revised so that after 20 years of being occupied and when the time period expires, it can be upgraded to land-ownership Property Rights.

Keywords: legal reconstruction, land rights, batam

Introduction

The need for land has become a primary need for humans since ages ago, as it is their basic needs. Therefore, it is necessary to pay attention to the matter of state land or land controlled directly by the state. Land that is not owned with any land rights is one of the objects of land registration. Legally, the right to control by a very broad state is limited by the interests of the community by taking into account independence, sovereignty (in determining the will and purpose of its use), and the value of justice (in obtaining and enforcing land rights), so that the goal of prosperity can be realized (Resmini, 2019) ^[7].

The land use policy is placed as a state policy as outlined in various laws and regulations. In Indonesia, this can be seen from the meaning contained in Article 33 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, which reads: "Earth, water and natural resources contained therein are controlled by the state and used for the greatest prosperity of the people."

From this definition, it can be seen that the basic provisions of the relationship between the state and citizens related to land. The basic provisions mainly contain the intent to abolish the basic principles known during the Dutch East Indies period, meaning the role of the state as owner as used in the *Domeinverklaring* principle (Budiono, 2018) ^[3]. This domain principle is not known in the joint agrarian legislation in Indonesia. In addition, because the *Domeinverklaring* principle is contrary to public legal awareness and constitutional principles, there is also no need for the state to be the owner of the land. More precisely, if the state is interpreted as an institution of power that "controls" (not "owns") the land.

Article 1 of *Agrarische Besluit (Domein Verklaring)*, states that all lands where other parties cannot prove to be eigendoms belong to the State. So the consequences faced by the Indonesian people in the colonial era were very heavy, as all the lands of the Indonesian people became colonial State lands, because the lands of the Indonesian people usually based on customary law which does not exist and is not regulated in the provisions of civil law. Usually, customary lands controlled by the community are unwritten and if they are asked to prove the land in the form of eigendom or property rights, it will be difficult to prove as that is the property of the State (Paisina, 2021). One example of a real case is what happened in Riau, Indonesia, which occurred because of the impact of the regional autonomy of Batam City, a city located in this province.

Regional autonomy as stated in Law Number 22 of 1999 is broad autonomy, namely the existence of regional authority to administer government which covers all areas of government except the authority in the fields of foreign policy, defense and security, judiciary, monetary and fiscal, religion and other related authorities.

Determined by Government Regulation. In addition, the freedom of autonomy and authority is complete and unanimous in its implementation, starting from planning, implementation, supervision, control, and evaluation. The determination of the status of regional autonomy is believed by the government to be able to further improve the development of a region, in this case, the City of Batam, so an important aspect that should not be ruled out is the real implementation of regional autonomy. We see the current reality is that the development of Batam City is not as expected, namely it can become a large industrial city like Singapore so that it can become one of the reliable economic locomotives of Indonesia.

In some circumstances, Batam City lags far behind other regions in Indonesia that do not have Regional Autonomy status. Initially, Batam City was designed to be an industrial city targeted for investment from foreign investors, but now it is increasingly losing its prestige and being abandoned by investors one by one. The city of Batam, which was previously expected to be able to compete with Singapore, is now far behind even from other Asean countries (Effendi, 2019) ^[4].

From some of the facts that happened, the writer saw that there were errors in the implementation of the status of regional autonomy. Currently the City of Batam recognizes 2 (two) bodies in managing the city, namely the Batam Concession Agency and the Batam City Government. In fact, often 2 bodies that have the same interest in managing Batam City so that it is more advanced and developed have actually become the cause of delays in the progress of Batam City development. The lack of harmony between the 2 (two) agencies in implementing regulations and handling problems in Batam City is the source of the problem.

The Batam Concession Agency (BP) also controls all land ownership on Batam Island. All land allocations must obtain a permit from the Batam Concession Agency (BP). The Batam Mayor's Office is still owned by BP Batam. In addition, all lands are in the form of usufructuary rights (some have property rights, but the percentage is very small).

Every few years, landowners have to pay the Authority Annual Compulsory Fee (UWTO) with different amounts depending on the location of the land, there are two ways or steps applied to land rights in Batam City currently (Batam City Government, 2014) :

1. Lands on Batam Island that are maintained with usufructuary status. This is to protect land in Batam from being controlled by a handful of people or maybe even controlled by foreign nationals with bad intentions. It is possible that someone deliberately bought a lot of land, after that to make Batam as quiet and unattractive as expected, the land was deliberately left empty to be used as idle land. If the land has the status of property rights, it will be difficult for the government to intervene so that the land is used properly.
2. Giving ownership status to residential land that is controlled or occupied by the community as a place to live, so that people feel they are no longer burdened with paying UWTO and the people of Batam City who have houses only need to pay land and building tax (PBB). Meanwhile, companies are still given the right to use and are required to pay UWTO

Currently, if there is unused land for a certain period of time, the Batam Concession Agency (BP) has the right to withdraw the land. In addition, if the land changes its status to property rights, it will make it difficult for the government if it requires land for certain purposes, for example, to build roads, add infrastructure, and many more. There are quite a few examples of how governments in other regions have to pull the strings tightly when making compensation for people's land that is needed for the public interest. Moreover, land in Batam is limited, and that is the reason why Batam is tasked to be an industrial city. What will happen if later there are investors who need land and there is no more available land because it has been used for other purposes other than industrial interests are what according to the author needs to be handled immediately.

Based on this background, this research consists of 2 (two) problem formulations, namely:

1. What are the weaknesses that arise in the Implementation of the Reconstruction of Land Rights Ownership Regulations in the Riau Archipelago Province based on the Value of Justice?
2. What is the ideal Reconstruction of the implementation of Law Enforcement of Land Rights in the Riau Archipelago Province based on the Value of Justice?

Method of Research

This study uses a constructivist legal research paradigm approach. The constructivism paradigm in the social sciences is a critique of the positivist paradigm. According to the constructivist paradigm of social reality that is observed by one person cannot be generalized to everyone, as positivists usually do.

This research uses descriptive-analytical research. Analytical descriptive research is a type of descriptive research that seeks to describe and find answers on a fundamental basis regarding cause and effect by analyzing the factors that cause the occurrence or emergence of a certain phenomenon or event.

The approach method in research uses a method (*socio-legal approach*). The sociological juridical approach (*socio-legal approach*) is intended to study and examine the interrelationships associated in real with other social variables (Toebagus, 2020) ^[9].

Sources of data used include Primary Data and Secondary Data. Primary data is data obtained from field observations and interviews with informants. While Secondary Data is data consisting of (Faisal, 2010):

1. Primary legal materials are binding legal materials in the form of applicable laws and regulations and have something to do with the issues discussed, among others in the form of Laws and regulations relating to the freedom to express opinions in public.

2. Secondary legal materials are legal materials that explain primary legal materials.
3. Tertiary legal materials are legal materials that provide further information on primary legal materials and secondary legal materials.

Research related to the socio-legal approach, namely research that analyzes problems is carried out by combining legal materials (which are secondary data) with primary data obtained in the field. Supported by secondary legal materials, in the form of writings by experts and legal policies.

Research Result and Discussion

1. Weaknesses That Arise In The Implementation Of The Reconstruction Of Land Rights Ownership Regulations In The Riau Archipelago Province Based On The Value Of Justice

The problems that arise regarding land acquisition problems in Riau Province can be seen from several areas, one of which is Batam City where one of the areas that is quite in the spotlight is the *Kampung Tua* area. According to Batam Mayor Decree No. KPTS 105/HK/IV/2004 states that in order to protect, preserve, and at the same time, as an effort to maintain the cultural values of the indigenous people of the island of Batam, it is necessary to establish areas where the people live as *Kampung Tuas* in Batam City. Legally, It is not recommended for the Batam Authority to be given management rights (HPL) for the Batam Authority and its Authority under the Batam City Government in accordance with the applicable laws and regulations in Law Number 6 of 2014 concerning Villages where in article 1 paragraph (1) explains that "*Villages are traditional villages and villages or called by other names, that are equivalent to Village is a legal community unit that has territorial boundaries that are authorized to regulate and manage government affairs, the interests of the local community based on community initiatives, rights and proposals, and/or traditional rights that are recognized and respected in the government system of the Unitary State of the Republic of Indonesia*".

As Times changed, at the beginning of the Reformation era, the administrative area of Batam turned into a city. According to the policy of the City Government (Pemko) of Batam through the Decree of the Mayor of Batam Number SKPT.105/HK/2004 (SK Wako 105/2004), the *Kampung Tua* needs to be preserved in the midst of industrialization and trade. The thirty-three points of *Kampung Tua* that need to be preserved on the mainland have a total area of approximately 1,200 hectares, or 3% of the area of Batam Island. Pemko negotiations with BP Batam until 2015 only resulted in the legality of *Kampung Tua* as many as 7 points. A total of 26 villages have not yet reached an agreement with BP Batam, with the reason stated by BP Batam that the area of *Kampung Tua* listed in SK Wako 105/2004 needs to be studied carefully.

It also applies to protected areas for this *Kampung Tua*, it is written in Presidential Regulation Number 87 of 2011 concerning Spatial Planning for Batam, Bintan, and Karimun Regions, in Article 1 paragraph (12) and paragraph (21) as "*Protection area is an area that determined with the main function of protecting environmental sustainability which includes natural resources and artificial resources*". And the Protected Zone is a zone determined by the characteristics of its spatial use based on the dominance of the activity functions of each zone in the Protected Area. Various land conflict resolutions are offered, both litigation and non-litigation, but in many cases, the results are not satisfactory. Even the settlement through the courts is sometimes felt by the community to be unsatisfactory. Not a few of those who have occupied land for years have had their lawsuits rejected to defend their rights or obtain rights because there are other parties who control the land in question. Or conversely, a person's claim against a certain land tenure is granted by the court even though the party who controls the land is not strong enough or the claim is not well-founded.

Based on the definition of land rights and the problems that exist in Batam City, especially *Kampung Tua* in Batam City, Where the *Kampung Tua* occupied by the people of Batam City is much longer than the establishment of the city of Batam, then this should also be a concern of the central government and not only the attention of the Batam City Government (Nugroho, 2019).

In view of this, the Batam city government issued a Mayor's Decree Number: KPTS.105/HK/III/2004 concerning the Determination of the *Kampung Tua* Area in Batam City. The decree aims to protect, preserve, and at the same time, as an effort to maintain the cultural values of the indigenous or local people who inhabited the city long before BP Batam was formed.

In addition, if Regional Regulation Number 2 of 2004 concerning the Spatial Planning of the City of Batam is confronted with Presidential Decree (Keppres) Number 41 of 1973, it is clear that there are very striking differences and this also hurts the hearts of the people, especially the traditional leaders and community leaders who have to maintain Malay culture in Batam.

This difference is implied in Article 6 of Presidential Decree Number 41 of 1973 which states that the right to manage land or the entire land area in Batam is handed over with the status of "*management rights*" from the central government to the Batam Authority (now BP Batam). The management rights contained in the regulation seem to mean that it is not permissible or not to recognize the control of land with the status of customary land or control, or the use of land that is used as a nature reserve or cultural heritage.

This provision contradicts the Regional Regulation Number 2 of 2004 and also contradicts the Decree of the Mayor of Batam, both of which recognize the existence of *Kampung Tua* in Batam with the aim of preserving ecosystems and culture, as well as relics of high historical value. The existence of Regional Regulations and Mayoral Decrees provides a special gap for the continuity of *Kampung Tua* in Batam, but the Presidential Decree does not seem to recognize the existence of *Kampung Tua* and only to be used as industrial land with

high selling value and to obtain as much income as possible for the government, that is at least the intention of the President of the Republic of Indonesia in issuing his decision. What is very unfortunate is that the issuance of the Presidential Decree which was considered Good in purpose turned out to be wrong, because it did not at all intend to protect the interests of the surrounding community.

The Presidential Decree only sided with the power holders who wanted to make Batam an international standard industrial area, while the local government was willing to fight just to maintain the existence of the *Kampung Tua* with various kinds of historical relics of the past that are still well preserved in it.

Therefore, it is very important for the Central Government to review every existing regulation in protecting the interests of the community, in particular, to preserve the famous cultural heritage in various parts of neighboring countries. Indonesia as a country with a noble culture should make every inch of the legacy of the past an asset that should be protected and maintained.

One form of defense and protection can be realized by providing a more spacious room for the people in it to participate in preserving every existing historical record, especially in the *Kampung Tua* area of Tanjung Riau which has old tombs, the remnants of the *Daek Lingga* kingdom. And the Kingdom of Malacca, not to mention the famous ship pirates who were once greatly feared by neighboring countries from the region. The most important thing in the aspirations of the people is to ask the government to give concessions in temporarily utilizing abandoned land, in accordance with the provisions of Article 6 and Article 15 of the Basic Law. Agrarian affairs that gives people the freedom to prevent damage to land by managing, maintaining, and temporarily controlling abandoned land with mutually recognized evidence.

According to Arie Sukanti (2007), the authority of the Regional Government in the land sector is only limited to locality or local in nature because the granting of autonomy to regional governments is the central government which has full authority, therefore the central government is expected to be able to determine land use policies in a fair context in accordance with security and defense needs, the vital needs of the community, as well as for socio-cultural interests which also need to be taken into account.

Based on the provisions of Article 33 paragraph (3) of the 1945 Constitution, it is stated that all land areas within the jurisdiction of the Unitary State of the Republic of Indonesia are the Ulayat rights of the Indonesian people as a gift from the Creator, God Almighty. So the control assigned to the state, in this case, is the central government to be further used for the benefit and prosperity of the community. Therefore, the regulation of Regional Regulation Number 2 of 2004 and the Decree of the Mayor of Batam Number 105 is very important to be enforced and implemented in accordance with the regulation of every legal joint in it. Because the two legal products both recognize the existence of the *Kampung Tua* with all socio-cultural aspects in it and to protect the rights of the community, the government, in particular, the Batam Concession Agency (BP) should be wiser in allocating land for industrial purposes. Without the slightest depriving the community of customary rights over a piece of *Kampung Tua's* land in Batam.

Regulations on land in Indonesia generally rely on Law Number 5 of 1960 concerning Agrarian Principles (UUPA). The UUPA itself does not explain in detail the meaning of Management Rights. Management rights are sourced from Article 2 of the UUPA, which explains that based on the 1945 Constitution, the entire earth, water, and space, including the natural resources contained therein, are controlled by the State which is the representative of the power organization of all the people in Indonesia.

In light to this problem, The state, in this case, has the authority to control the earth, water, and space, including the natural resources contained therein by regulating the use, supply, and maintenance, as well as regulating legal relations as well as legal actions between people and the earth, water, and space. From this explanation, although it does not explicitly mention Management Rights, the LoGA broadly explains that the State, in this case acting as an organization that represents the community, has the authority to control land rights, which are part of the earth, water, and space, including the natural wealth contained therein.

In the Regulation of the Minister of Agrarian Affairs/Head of the National Land Agency Number 9 of 1999 concerning Procedures for Granting and Canceling State Land Rights and Management Rights, it is explained that Management Rights are the controlling rights of the state whose authority is partially delegated to the holder. Other laws and regulations, namely Law Number 20 of 2000 concerning amendments to Law Number 21 of 1997 concerning Customs for Acquisition of Rights on Land and Buildings jo. Government Regulation No. 36 of 1997 explains that Management Rights are the control rights of the State over land whose implementation authority is partially delegated to the right holder to plan the designation and use of land, use the land for the purpose of carrying out his duties, hand over parts of the land to third parties and/or cooperate with third parties.

Based on the description above, it can be concluded that the weaknesses of land ownership regulation in Riau; are the substance of the legal structure, where the need for legal exceptions to land and building ownership of Batam City Land Rights, especially between residential houses and industrial and office buildings and its legal culture of Batam City Development is no longer in accordance with the initial concept, so it is necessary to change the legal rules that are no longer appropriate. Article 6 of Presidential Decree Number 41 of 1973 states that the right to manage land or the entire land area in Batam City is handed over with the status of "*management rights*" from the central government to the Batam Authority (now the Batam Concession Agency). The management rights contained in the regulation seem to mean that it is not permissible or not to recognize the control of a land with the status of customary land or control, or the use of land that is used as a nature reserve or cultural heritage. The city of Batam is intended to be used as an industrial land with high competitive value, especially to offset the State of Singapore, and obtain as much income as possible for the government. It is

unfortunate that the President of the Republic of Indonesia at that time issued a Presidential Decree which was considered good in purpose at that time, but at this time it is considered a misdirection because it does not at all intend to protect the interests of the people around him, especially the ownership of residential land rights. The Batam city government issued a Mayor's Decree (SK) Number: KPTS.105/HK/III/2004 concerning the Determination of the *Kampung Tua* Village Area in Batam City. The decree aims to protect, preserve, and at the same time as an effort to maintain the cultural values of the indigenous or local people who have inhabited the city of Batam, long before the Batam Concession Agency (BP) was formed. Lack of legal awareness in the community to upgrade Land Certificates to Certificates. Because with SKT, people think they can buy and sell land. In addition, it is hoped that the government program in the form of systematic land registration (Prona/PTSL) can overcome this problem. Lack of coordination between village heads/sub-district heads between regencies and cities in the Riau Archipelago Province. So that the Land Certificate can be canceled only on the grounds that it has different administration. SKT can also be used as evidence of ownership of rights in court. Enforcement of comprehensive management rights to land rights in Batam city, so that building use rights cannot be upgraded to property rights.

2. Ideal Reconstruction Of The Implementation Of Law Enforcement Of Land Rights In The Riau Archipelago Province Based On The Value Of Justice

Land for most people is an identity attached to their national and state status. Especially for the people of Indonesia, the LoGA states that the relationship between residents and their land is eternal and basic. From this relationship, it can be seen that it greatly affects the welfare, prosperity, justice, and sustainability, as well as the harmony of the Indonesian nation and state. For this reason, the use of land by the people is to continue the mandate of the 1945 Constitution of the Republic of Indonesia, in which land is used as much as possible for the prosperity of the people. This is possible because the state has dominion over all of the earth, water, and space.

Social justice is not only the responsibility of the state to make it happen, but is a shared responsibility, namely the state, economic actors, and the people as a whole. The state in this context acts as a facilitator and regulator as well as a good referee (Widodo, 2018), if necessary to intervene so that access to ownership, control, use, and utilization of land and natural resources for the people, especially commoners, is wide open and well available.

Linking social justice with law enforcement is very logical considering the first ideal of law is justice other than order and benefit. One of the main sources of social injustice is the capitalist economic system with neo-liberal ideology. The United Nations Environment Program (UNEP), one of the international institutions that specifically pays attention to environmental issues launched an idea in 2008, namely as follows: "*Green economy as one that results in improved human well-being and social equity, while significantly reducing environmental risk and ecological scarcities. In its simplest expression, a green economy can be thought of as one which is a low carbon, resource efficient and socially inclusive*".

A situation that encourages people to consider the meaning of justice is the experience of injustice experienced, whether experienced by an individual vis-a-vis to other individuals, certain groups, certain ethnicities, or even a nation. In history, there have been so many incidents of injustice that have been born in society and the world, forcing people to try to formulate the meaning of justice from the experience of injustice. An important moment in contemplating the meaning of justice is the 1948 Universal Declaration of Human Rights (UDHR) with all its demands. Individual justice is described in civil and political rights which are summarized in the International Covenant on Civil and Political Rights of 1966 and social justice is described in economic, social, and cultural rights which are summarized in the International Covenant on Social, Economic, and Cultural Rights 1966.

Law enforcement in the state of Pancasila law must prioritize justice, where this justice respects human rights. It is not allowed to enforce the law through violent means, because this will only increase the conflict to be prolonged. Law enforcement should be carried out through preventive efforts first before being resolved through legal channels. Deliberation can be an alternative solution to resolve any conflicts or disputes in society, both problems in the civil sector.

Based on the reconstruction of the ideal value in the implementation of the acquisition of Land Rights in the Province of the Riau Archipelago for land tenure, namely:

- a. Certainty regarding the increase in land ownership status from *Hak Guna Bangunan* to *Hak Milik*.
- b. The need for changes to the rules for residential houses on Land with Management Rights in Batam City.
- c. The need for convenience in obtaining land title certificates for Land Certificates at BPN, especially in terms of sporadic registration.

Based on the foregoing, the Reconstruction of the regulation of ownership of land rights based on the ideal value of justice in the implementation of law enforcement on the ownership of land rights in the Riau Islands province is based on the value of justice and it can be done by reconstructing several articles of Government Regulation Number 18 of 2021 concerning management rights, land rights, flat units, and land registration so that they can accommodate the increase in land status in land management and registration rights in the Riau Islands province. If we look at South Korea, the people are given ownership rights quite broadly, while in Batam City, the people find it difficult to get property rights. So it does not fulfill the sense of justice. Management rights on State land in the form of usufructuary rights used by the community in Batam City, preferably after 20 years of being occupied and when the period of time runs out can be upgraded to *Hak Milik*.

Conclusion

Based on the discussion described above, several things can be concluded as follows:

1. Weaknesses of land ownership regulation in Riau can be seen in the substance of the legal structure, the need for legal exceptions to land, and building ownership of Batam City Land Rights, especially between residential houses and industrial and office buildings. Next, in its Legal Culture, Batam City Development is no longer in accordance with the initial concept, so it is necessary to change the legal rules that are no longer appropriate. Article 6 of Presidential Decree Number 41 of 1973 states that the right to manage land or the entire land area in Batam City is handed over with the status of "management rights" from the central government to the Batam Authority (now the Batam Concession Agency). The management rights contained in the regulation seem to mean that it is not permissible or not to recognize the control of land with the status of customary land or control, or the use of land that is used as a nature reserve or cultural heritage. The city of Batam is intended to be used as an industrial land with high competitive value, especially to offset the State of Singapore, and obtain as much income as possible for the government. It is unfortunate that the President of the Republic of Indonesia at that time issued a Presidential Decree which was considered good in purpose at that time, but at this time it is considered a misdirection because it does not at all intend to protect the interests of the people around him, especially the ownership of residential land rights. The Batam city government issued a Mayor's Decree (SK) Number: KPTS.105/HK/III/2004 concerning the Determination of the *Kampung Tua* Village Area in Batam City. The decree aims to protect, preserve, and at the same time as an effort to maintain the cultural values of the indigenous or local people who have inhabited the city of Batam, long before the Batam Concession Agency (BP) was formed. Lack of legal awareness in the community to upgrade Land Certificates to Certificates. Because with SKT, people think they can buy and sell land. In addition, it is hoped that the government program in the form of systematic land registration (Prona/PTSL) can overcome this problem. Lack of coordination between village heads/Village-Head/sub-district heads between regencies and cities in the Riau Archipelago Province. So that the Land Certificate can be canceled only on the grounds that it has different administration. SKT can also be used as evidence of ownership of rights in court. Enforcement of Management Rights as a whole for Land Rights in Batam City, so that Building Use Rights cannot be upgraded to Ownership Rights.
2. Reconstruction of the regulation of ownership of land rights based on the ideal value of justice in the implementation of law enforcement on ownership of land rights in the Riau Islands province based on the value of justice is needed especially in several articles of Government Regulation Number 18 of 2021 concerning management rights, land rights, flat units, and land registration so that they can accommodate the increase in land status in land management and registration rights in the Riau Islands province where, by comparing to South Korea, the people are given ownership rights quite broadly, while in Batam City, the people find it difficult to get property rights. So it does not fulfill the sense of justice. Management rights on State land in the form of usufructuary rights used by the community in Batam City, preferably after 20 years of being occupied and when the period of time runs out can be upgraded to *Hak Milik*.

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