

The Impact of Constitutional Court Decision No. 90/PUU-XXI/2023 on Judicial Dignity and Constitutional Legitimacy

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Abstract

The decision made by the Constitutional Court in examining the minimum age limit for presidential candidates and vice presidents in Article 169 letter q of the Election Law, as outlined in Decision Number 90/PUU-XXI/2023, is legally flawed. This is due to a violation of the code of ethics by one of the Constitutional Court Judges during the case's examination and decision-making process. Moreover, the age limit for presidential candidates and vice presidents, which is regulated in Article 169 Letter Q of the Election Law, is part of an open legal policy. Therefore, the Constitutional Court does not have the right to change or decide the case. This has significant implications for the temper of the Constitutional Court. To address the problematic decision and the violations of the code of ethics, the Constitutional Court Ethics Council is taking steps to improve the tarnished image of the Constitutional Court caused by Decision Number 90/PUU-XXI/2023.

Keywords

Age Limit; Judicial Ethics; Open Legal Policy; Constitutional Court Decision; The Dignity of the Constitutional Court; Constitutional Court Ethics Council

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1. INTRODUCTION

Indonesia is a state based on law, as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia, hereinafter referred to as the 1945 Constitution (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 1 Ayat (3), 1945). This constitutional identity requires the exercise of state power to be controlled by legal norms rather than by arbitrary political will. The rule of law is not merely the existence of written legal norms, but also a constitutional principle requiring public power to be exercised through stable, general, clear, and prospective rules. In this sense, the rule of law limits arbitrary power and ensures that government authority is accountable to law rather than political preference (Dicey, 1982; Fuller, 1969; Raz, 1979; Tamanaha, 2004). In constitutional theory, legal sovereignty or nomocracy must operate alongside people's sovereignty or democracy, because the will of the people obtains constitutional legitimacy only when it is expressed through legal procedures and remains subject to constitutional limits (d'Entrèves, 1967; Huijbers, 1988; Munir, 1989). This relationship reflects the idea of constitutional democracy, in which democratic power must be exercised within



constitutional boundaries, while constitutional review functions as a mechanism to prevent majoritarian or political power from exceeding those boundaries (Dworkin, 1986; Ginsburg, 2003; Tushnet, 2008). This is consistent with the rule of law principle, which requires law to be capable of guiding the conduct of legal subjects through clarity, stability, and institutional obedience to legal procedures (Raz, 1979). Within this framework, the Constitutional Court occupies a strategic position as the guardian and interpreter of the Constitution because Article 24C paragraph (1) of the 1945 Constitution grants it the authority to review laws against the Constitution and to decide constitutional disputes at the first and final instance (Undang-Undang Dasar Negara Republik Indonesia Tahun 1945, Pasal 24C Ayat (1), 1945). The establishment of constitutional courts in modern constitutional systems is generally intended to protect constitutional supremacy by ensuring that statutory norms remain consistent with the Constitution. However, this authority must be exercised carefully because constitutional review also creates a tension between judicial power and democratic law-making authority (Cappelletti, 1971; Waldron, 2006).

Recently, public debate in Indonesia has focused on the Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the minimum age requirement for presidential and vice-presidential candidates. The case arose from a petition submitted by Almas Tsaqibbirru Re A., a student at the Faculty of Law, Universitas Surakarta, who challenged Article 169 letter q of Law Number 7 of 2017 concerning General Elections. The provision required presidential and vice-presidential candidates to be at least 40 years old. The petitioner argued that the provision violated his constitutional rights as guaranteed under Article 27 paragraph (1), Article 28D paragraph (1), Article 28D paragraph (3), and Article 28I paragraph (2) of the 1945 Constitution (*Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023*, 2023, p. 10).

In his petition, the petitioner argued that the age requirement under Article 169 letter q of the Election Law constituted age-based discrimination and deprived certain age groups of equal opportunities to participate in government (*Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023*, 2023, p. 14). The petition also referred to the petitioner's admiration for Gibran Rakabuming Raka, the Mayor of Surakarta, as an example of a young regional leader considered capable of holding national office (*Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023*, 2023, p. 15). On that basis, the petitioner requested the Constitutional Court to declare Article 169 letter q of the Election Law conditionally unconstitutional and to interpret the provision as "at least 40 years old or having experience as a regional head at the provincial or regency/city level" (*Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023*, 2023, p. 18).

The Constitutional Court partially granted the petition. In its ruling, the Court declared Article 169 letter q of Law Number 7 of 2017 conditionally unconstitutional insofar as the phrase "at least 40 years

old” was not interpreted to include candidates who have held or are currently holding an office elected through general elections, including regional head elections. Therefore, after Decision Number 90/PUU-XXI/2023, Article 169 letter q must be understood as requiring presidential and vice-presidential candidates to be “at least 40 years old or have held/are currently holding an office elected through general elections, including regional head elections” (*Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023*, 2023).

The decision raises an important theoretical issue concerning the boundary between constitutional adjudication and legislative policy-making. This boundary is crucial because excessive judicial intervention in policy matters may lead to the judicialization of politics, where courts increasingly become decisive actors in resolving political questions that were previously settled by legislatures or elected institutions (Ferejohn, 2002; Hirschl, 2004). In the classical model of constitutional review, a constitutional court is primarily designed to examine the constitutionality of statutes and to annul norms that conflict with the Constitution, rather than to replace the legislature’s policy choices with new normative formulations (Hans, 1942). This idea is also reflected in the doctrine of the Constitutional Court as a negative legislator. In the Indonesian context, the Constitutional Court’s role as a negative legislator has been widely discussed in relation to the limits of constitutional review and the risk of shifting toward a positive legislator when the Court creates or reformulates legal norms (Xavier Nugraha, Risdiana Izzaty, 2020).

The controversy surrounding Decision Number 90/PUU-XXI/2023 is closely related to the doctrine of open legal policy. In several previous decisions, including Decision Number 15/PUU-V/2007 and Decision Number 37-39/PUU-VIII/2010, the Constitutional Court had treated age requirements for public offices as a matter that may be determined by lawmakers, as long as the policy does not violate the Constitution. This approach indicates that the determination of the minimum age requirement for presidential and vice-presidential candidates belongs primarily to the legislative domain. Therefore, when the Court reformulated Article 169 letter q of the Election Law in Decision Number 90/PUU-XXI/2023, the decision raised questions about whether the Court had moved beyond its role as a negative legislator.

In addition to the problem of institutional authority, Decision Number 90/PUU-XXI/2023 also raised concerns regarding judicial ethics and impartiality. These concerns emerged because the petition referred to Gibran Rakabuming Raka, while the Chief Justice of the Constitutional Court at that time, Anwar Usman, had a familial relationship with him. From the perspective of judicial ethics, the appearance of impartiality is essential to preserve public confidence in judicial institutions. The Bangalore Principles of Judicial Conduct emphasize independence, impartiality, integrity, propriety, equality, competence, and diligence as core judicial values; therefore, judges must avoid not only actual

bias but also circumstances that may reasonably create the appearance of bias (Integrity, 2002). The ethical dimension of the case later became the object of examination by the Constitutional Court Ethics Council, particularly in Decision Number 2/MKMK/L/11/2023 concerning Anwar Usman.

Based on these legal and ethical issues, this article examines the impact of Constitutional Court Decision Number 90/PUU-XXI/2023 on the dignity of the Constitutional Court as the guardian of the Constitution and the guardian of law. This article formulates two research questions: 1) What is the impact of Constitutional Court Decision Number 90/PUU-XXI/2023 on the dignity of the Constitutional Court as the guardian of law? 2) What is the role of the Constitutional Court Ethics Council in restoring the dignity of the Constitutional Court after Decision Number 90/PUU-XXI/2023?

This research aims to analyze the legal and ethical implications of Constitutional Court Decision Number 90/PUU-XXI/2023 for the dignity of the Constitutional Court and to examine the role of the Constitutional Court Ethics Council in responding to the ethical problems arising from the decision. By doing so, this study is expected to contribute to the development of constitutional law discourse, particularly regarding the limits of constitutional adjudication, judicial ethics, and institutional legitimacy in Indonesia.

2. METHOD

This study uses normative legal research because it examines legal norms, constitutional principles, judicial decisions, and legal doctrines related to Constitutional Court Decision Number 90/PUU-XXI/2023. Normative legal research focuses on legal norms, principles, doctrines, and library-based legal materials rather than empirical data (Soekanto & Mamudji, 2010). The approaches used are the statutory approach, case approach, and conceptual approach. These approaches are relevant because legal issues may be examined through legislation, court decisions, and legal concepts or doctrines (Marzuki, 2022). The statutory approach is used to examine the 1945 Constitution, Law Number 7 of 2017 concerning General Elections, Law Number 48 of 2009 concerning Judicial Power, and relevant Constitutional Court regulations. The case approach is used to analyze Constitutional Court Decision Number 90/PUU-XXI/2023 and related Constitutional Court Ethics Council decisions. The conceptual approach is used to examine the concepts of rule of law, constitutional supremacy, open legal policy, negative legislator, judicial ethics, and judicial dignity. The legal materials consist of primary, secondary, and tertiary legal materials, collected through library research and analyzed qualitatively using legal interpretation and legal reasoning.

3. FINDINGS AND DISCUSSION

3.1 *The Impact of Constitutional Court Decision 90/PUU-XXI/2023 on the Dignity of the Constitutional Court as the Guardian of Law.*

The 1945 Constitution is the supreme law of the Indonesian legal system and embodies the principle of constitutionalism. Constitutionalism requires that state power be limited by constitutional norms in order to prevent arbitrariness and abuse of power. After the amendments to the 1945 Constitution, Indonesia's constitutional structure increasingly emphasized the separation of powers and checks and balances among state institutions. Within this structure, the Constitutional Court has the authority to conduct constitutional review by examining whether statutes are consistent with the 1945 Constitution. This authority confirms the position of the Constitutional Court as the guardian of the Constitution and, in a broader sense, the guardian of law (Nawas, 2021). However, Decision Number 90/PUU-XXI/2023 raises a fundamental issue because the Court did not merely review the constitutionality of Article 169 letter q of the Election Law, but also reformulated the meaning of the age requirement for presidential and vice-presidential candidates.

In constitutional review theory, the role of a constitutional court is commonly understood as that of a negative legislator. Kelsen (1942) explains that a constitutional court is designed to annul legal norms that contradict the Constitution, rather than to replace the legislature in formulating new policy choices. This theoretical position is important in assessing Decision Number 90/PUU-XXI/2023 because the decision did not merely annul Article 169 letter q of Law Number 7 of 2017 concerning General Elections. Instead, the Court gave a new conditional interpretation to the provision by adding an alternative requirement for presidential and vice-presidential candidates, namely that a candidate must be at least 40 years old or have held/is currently holding an office elected through general elections, including regional head elections (*Putusan Mahkamah Konstitusi Nomor 90/PUU-XXI/2023*, 2023). This formulation raises a fundamental question as to whether the Court remained within its role as a negative legislator or shifted toward the role of a positive legislator.

The controversy becomes more significant because the minimum age requirement for presidential and vice-presidential candidates is closely related to the doctrine of open legal policy. In previous decisions, including Constitutional Court Decision Number 15/PUU-V/2007 and Constitutional Court Decision Number 37-39/PUU-VIII/2010, the Constitutional Court had taken the position that age requirements for public offices constitute a legal policy that may be determined by lawmakers, as long as the policy does not contradict the Constitution. This position is consistent with the fact that the 1945 Constitution does not determine a specific minimum age for presidential and vice-presidential candidates. Instead, Article 6 paragraph (2) of the 1945 Constitution states that further requirements to become President and Vice President shall be regulated by law. The constitutional amendment debates

also show that the minimum age requirement was discussed but ultimately left to the legislature as a matter of statutory regulation (1945, 2010, p. 159).

Based on this framework, the age requirement in Article 169 letter q of the Election Law should be understood as part of an open legal policy. In constitutional adjudication, matters that are expressly delegated to the legislature require judicial restraint, particularly when the Constitution does not provide a specific constitutional standard. Judicial restraint is important to preserve the separation of powers and to prevent courts from substituting their policy preferences for those of democratically accountable lawmakers (Bickel, 1986; Tushnet, 2008). The legislature had previously changed the minimum age requirement from 35 years old under earlier election laws to 40 years old under Law Number 7 of 2017. This legislative development shows that the determination of the age requirement has historically been placed within the authority of the legislature. Therefore, when the Constitutional Court reformulated Article 169 letter q by adding an alternative requirement based on elected office experience, the decision created a serious debate concerning the proper boundary between constitutional adjudication and legislative policy-making.

The Constitutional Court itself has recognized that open legal policy may be reviewed only under certain conditions. In Decision Number 26/PUU-VII/2009, the Court stated that a legal policy may be questioned if it violates morality, rationality, or creates intolerable injustice (*Putusan Mahkamah Konstitusi Nomor 26/PUU-VII/2009*, 2009). In the context of Decision Number 90/PUU-XXI/2023, the argument that the age requirement created intolerable injustice is debatable. The age requirement of at least 40 years old does not permanently eliminate a citizen's right to be elected as President or Vice President. It only delays eligibility until the person reaches the required age. Moreover, age requirements are commonly used in various public offices and electoral candidacy requirements. Therefore, the minimum age requirement in Article 169 letter q of the Election Law can be argued to remain within the scope of legislative policy rather than an unconstitutional restriction.

From the perspective of the negative legislator doctrine, Decision Number 90/PUU-XXI/2023 may be viewed as problematic because the Court did not merely declare a legal norm unconstitutional. The Court reformulated the norm by adding a new alternative criterion that was not expressly determined by the legislature. Nugraha, Izzaty, and Anira (2020) explain that the Constitutional Court may appear to act as a positive legislator when it creates or reformulates legal norms. Such a role may be justified only in limited circumstances, such as to prevent legal vacuum, avoid legal chaos, or protect justice and public benefit. In Decision Number 90/PUU-XXI/2023, however, the existence of a legal vacuum is difficult to establish because Article 169 letter q had already regulated the minimum age requirement. Consequently, the decision may be criticized as an expansion of judicial authority into the legislative domain.

The procedural aspect of the case also affects the dignity of the Constitutional Court. Procedural regularity is essential to judicial legitimacy because courts derive authority not only from the legal correctness of their decisions but also from the fairness, transparency, and consistency of the decision-making process. Public acceptance of judicial decisions is strongly influenced by whether the court is perceived as procedurally fair and institutionally trustworthy (Gibson et al., 1998). In the dissenting opinion, it was noted that the petition in Case Number 90/PUU-XXI/2023 had been withdrawn by the petitioner's legal counsel and was later followed by a cancellation of the withdrawal. This procedural development raised questions because Article 75 of Constitutional Court Regulation Number 2 of 2021 provides that when a petition is withdrawn, the Court issues a ruling in the form of a determination, and a withdrawn petition cannot be filed again. Although this procedural issue does not automatically invalidate the decision, it strengthens the perception that the case was handled in an unusual manner. For a constitutional court, procedural consistency is essential because the legitimacy of judicial decisions depends not only on the final ruling but also on the fairness and regularity of the decision-making process.

The ethical dimension is even more serious. The petition expressly referred to Gibran Rakabuming Raka, while the Chief Justice of the Constitutional Court at that time, Anwar Usman, had a familial relationship with him. This situation created a concern regarding conflict of interest and judicial impartiality. Judicial impartiality requires judges to avoid not only actual bias but also circumstances that may reasonably create the appearance of bias. This standard is particularly important in constitutional adjudication because constitutional court decisions are final, politically significant, and directly affect public trust in the judiciary (Shetreet & Turenne, 2013). Article 17 paragraph (5) of Law Number 48 of 2009 concerning Judicial Power provides that a judge or court clerk must withdraw from a case if they have a direct or indirect interest in the case. This principle is consistent with the Bangalore Principles of Judicial Conduct, which emphasize that judges must uphold independence, impartiality, integrity, propriety, equality, competence, and diligence (Integrity, 2002). Judicial impartiality is not limited to the absence of actual bias; it also includes the duty to avoid circumstances that may reasonably create the appearance of bias.

The appearance of bias is important because courts rely heavily on public confidence. Tyler (2006a) argues that legal authority gains legitimacy when people perceive legal institutions as fair and trustworthy. In the context of constitutional adjudication, public confidence is particularly important because Constitutional Court decisions are final and binding. When the public perceives that a constitutional decision is influenced by personal, familial, or political interests, the authority of the Court as the guardian of law may be weakened. Therefore, the participation of the Chief Justice in

deciding a case that had a visible connection to a family member raised a serious ethical issue and affected the institutional dignity of the Constitutional Court.

Based on the above analysis, Constitutional Court Decision Number 90/PUU-XXI/2023 had a significant impact on the dignity of the Constitutional Court. The impact did not arise only from the substance of the decision, but also from the combination of substantive, procedural, and ethical problems. Substantively, the decision raised concerns about the Court's movement from negative legislator to positive legislator. Procedurally, the withdrawal and cancellation of withdrawal of the petition created questions regarding consistency in case handling. Ethically, the involvement of a judge with a potential conflict of interest affected public confidence in judicial impartiality. These factors collectively weakened the image of the Constitutional Court as the guardian of the Constitution and the guardian of law.

3.2 To what extent does MKMK contribute to restoring the dignity of the Constitutional Court, following the ruling of Constitutional Court Decision 90/PUU-XXI/2023?

The ethical controversy surrounding Decision Number 90/PUU-XXI/2023 led to public reports against several Constitutional Court judges. These reports were examined by the Constitutional Court Ethics Council, hereinafter referred to as MKMK. The existence of MKMK is important because judicial ethics serves as an institutional mechanism to preserve the dignity, honor, and integrity of the Court. In this sense, MKMK functions not only as a disciplinary body but also as an ethical accountability mechanism for the Constitutional Court. Judicial accountability is necessary to ensure that judicial independence does not become institutional immunity. A court can maintain its independence only when it is accompanied by ethical standards, disciplinary mechanisms, and public accountability that protect the integrity of judicial office (Geyh et al., 2013). This role is consistent with the Bangalore Principles of Judicial Conduct, which state that judges are accountable to institutions established to maintain judicial standards (Integrity, 2002).

In responding to the ethical issues arising from Decision Number 90/PUU-XXI/2023, MKMK issued several decisions. First, in Decision Number 5/MKMK/L/11/2023, MKMK found that the reported judges had collectively violated the Code of Ethics and Conduct of Constitutional Judges, particularly the principle of propriety and decency, in relation to the leakage of confidential information from the Judges' Deliberation Meeting and the handling of conflict of interest issues. MKMK imposed a collective oral warning on the reported judges (*Putusan Nomor 5/MKMK/L/11/2023*, 2023).

Second, in Decision Number 3/MKMK/L/11/2023 concerning Saldi Isra, MKMK stated that the reported judge was not proven to have violated the Code of Ethics and Conduct of Constitutional Judges in relation to his dissenting opinion. However, MKMK also found that he, together with other judges,

was collectively responsible for the failure to maintain the confidentiality of information from the Judges' Deliberation Meeting and for the handling of conflict of interest issues. Therefore, MKMK imposed a collective oral warning (*Putusan Nomor 3/MKMK/L/11/2023, 2023*).

Third, in Decision Number 4/MKMK/L/11/2023 concerning Arief Hidayat, MKMK stated that the reported judge was not proven to have violated the Code of Ethics and Conduct of Constitutional Judges in relation to his dissenting opinion. However, MKMK found that his public statements had violated the principle of propriety and decency because they were considered capable of lowering the dignity of the Constitutional Court. For this reason, MKMK imposed a written warning. In addition, he was also included in the collective oral warning related to the leakage of confidential information from the Judges' Deliberation Meeting and the handling of conflict of interest issues (*Putusan Nomor 4/MKMK/L/11/2023, 2023*).

Fourth, in Decision Number 2/MKMK/L/11/2023 concerning Anwar Usman, MKMK found that the Chief Justice of the Constitutional Court had committed a serious ethical violation. MKMK stated that Anwar Usman violated several principles contained in *Sapta Karsa Hutama*, including impartiality, integrity, competence and equality, independence, and propriety and decency. The most significant issue was his failure to withdraw from the examination and decision-making process in a case that had a connection to his family relationship. As a sanction, MKMK dismissed Anwar Usman from his position as Chief Justice of the Constitutional Court (*Putusan Nomor 2/MKMK/L/11/2023, 2023*).

The decisions of MKMK show that ethical accountability plays an important role in restoring the dignity of the Constitutional Court. By imposing sanctions ranging from oral warnings to dismissal from the position of Chief Justice, MKMK demonstrated that ethical violations within the Constitutional Court could be institutionally addressed. This response was necessary to protect public confidence in the Court after Decision Number 90/PUU-XXI/2023. From the perspective of judicial legitimacy, ethical accountability is essential because public trust in courts depends not only on legal reasoning but also on the perception that judges act independently, impartially, and with integrity (Tyler, 2006b).

However, the role of MKMK has clear limitations. Nevertheless, ethical accountability and legal validity operate in different institutional spheres. Ethical sanctions may restore part of the Court's moral authority, but they do not necessarily eliminate the legal consequences of a final and binding constitutional decision. This distinction explains why the restoration of institutional dignity after Decision Number 90/PUU-XXI/2023 remains incomplete even after MKMK imposed sanctions on the judges involved. MKMK is an ethics body, not a judicial review body. Therefore, although MKMK can examine ethical violations and impose ethical sanctions on Constitutional Court judges, it cannot annul, revise, or declare invalid Constitutional Court Decision Number 90/PUU-XXI/2023. This limitation is important because Constitutional Court decisions are final and binding. Consequently, MKMK's role in

restoring the dignity of the Constitutional Court is partial rather than complete. It can address the ethical consequences of the decision-making process, but it cannot correct the legal effects of the decision itself.

Based on this analysis, MKMK contributed significantly to restoring the dignity of the Constitutional Court by identifying ethical violations and imposing sanctions on the judges involved. Its decisions helped reaffirm the importance of judicial ethics, impartiality, confidentiality, and institutional responsibility. Nevertheless, the restoration of the Court's dignity remains incomplete because Decision Number 90/PUU-XXI/2023 continues to have legal force, while the controversy over the Court's authority, the doctrine of open legal policy, and the role of the Court as a negative legislator remains unresolved. Therefore, MKMK's contribution should be understood as an ethical restoration mechanism, not as a legal remedy capable of eliminating the substantive and procedural controversies arising from the decision.

4. CONCLUSION

Based on the discussion, Constitutional Court Decision Number 90/PUU-XXI/2023 contains significant legal and ethical problems. From the legal perspective, the decision is problematic because the minimum age requirement for presidential and vice-presidential candidates is closely related to the doctrine of open legal policy, which should primarily fall within the authority of the legislature. By reformulating Article 169 letter q of Law Number 7 of 2017 concerning General Elections, the Constitutional Court raised concerns about the boundary between its role as a negative legislator and the legislative authority to formulate legal policy. From the ethical perspective, the examination and decision-making process raised serious concerns regarding judicial impartiality, conflict of interest, and the dignity of the Constitutional Court. Therefore, Decision Number 90/PUU-XXI/2023 has affected the institutional dignity of the Constitutional Court as the guardian of the Constitution and the guardian of law.

The Constitutional Court Ethics Council has played an important role in responding to the ethical violations arising from the examination and decision-making process of Case Number 90/PUU-XXI/2023. Through several MKMK decisions, sanctions were imposed on Constitutional Court judges, ranging from oral warnings and written warnings to the dismissal of Anwar Usman from his position as Chief Justice of the Constitutional Court. These decisions show that MKMK functions as an ethical accountability mechanism to preserve the dignity, honor, and integrity of the Constitutional Court. However, MKMK's role in restoring the dignity of the Constitutional Court remains limited. MKMK can examine ethical violations and impose ethical sanctions, but it does not have the authority to assess, annul, revise, or change Constitutional Court decisions. As a result, although MKMK has contributed to restoring the ethical dimension of the Court's dignity, the legal controversy surrounding Decision

Number 90/PUU-XXI/2023 remains unresolved because the decision is final and binding.

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