

## THE LEGAL INTRICACIES OF ILLEGAL PINJOL AND PINJOL

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### ABSTRACT

Motivated by the many illegal pinjols that seem to be endless, even though thousands of them have been closed by the Government; The anxiety, anxiety, and anxiety experienced by victims of illegal pinjol, illegal pinjol which has clearly disturbed/hindered the growth of official pinjol, prompted a review of the problem of illegal pinjol and pinjol. This study aims to discover the ins and outs of the law and illegal borrowing. The research method used in this study is normative legal research, often synonymous with *library research*. As a normative legal research, this study uses documents as a source of data, both from journals and from the internet that describe illegal lending services that have caused anxiety, anxiety, and anxiety experienced by victims of illegal pinjol. From the review carried out, it is known that based on OJK Regulation Number 77 / POJK.01 / 2016 concerning Technology-Based Money Lending and Borrowing Services, lending must be held by an operator who is registered and has permission from the Financial Services Authority (OJK), its implementation must also follow OJK regulations. Efforts to overcome illegal borrowing are in addition to intensifying the closure of illegal loans, cracking down and/or punishing illegal borrowers who commit lies and/or fraud in offering and/or promoting loans and perpetrators who make threats and intimidation in collecting as encouraged by the current Government, is to educate the public so as not to fall into borrowing to illegal loans

**Keywords:** *law, pinjol, OJK*

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### INTRODUCTION

The digital era or known as the 4.0 era has now offered various conveniences and changes in lifestyle (Widjaja, 2022). To meet various needs, today people no longer need to be tired of going out of the house, everything can be fulfilled simply from the bedroom using a gadget/android mobile phone. Starting from various basic necessities, payment of various bills/accounts, tickets, hotels, and various other needs, everything can be fulfilled easily through the application that has been provided without having to get tired of leaving the house by spending energy, time to queue which sometimes reaches hours (Sinaga & Alhakim, 2022).

Similarly, with lending and borrowing money, today's loan service provider business entities no longer have to bother opening many offices with all the facilities and infrastructure and many human resources (employees) to serve borrower customers. For borrower customers, it is also the case, no longer have to be tired of visiting loan service provider offices that are sometimes not closed and have to queue. The era of digitalization has offered convenience in borrowing money that today we are interested in online loans (pinjol) (Hartati, 2022).

Whether coincidentally or not, the discovery and utilization of digital technology seems to have been created to answer one of the global problems that were being faced some time ago, namely the spread of a virus outbreak called Coronavirus Disease-19, abbreviated as Covid-19. How the use of digital technology is very helpful for all of us, both for business purposes, educational interests, offices, meeting household needs, and meeting other needs when the impact of the spread of Covid-19 has limited us to make personal contact.

However, as is almost always the case, the discovery and use of new technologies that offer various conveniences and bring lifestyle changes, also bring negative impacts in the form of various problems. Many problems arise from the use of digital technology, quoted from <https://www.klobility.id/post/dampak-dan-peluang-era-digital>, there are 5 negative impacts of this digital era, namely:

1. Increased infringement of copyright or intellectual property rights

The number of copyrighted works that already exist on the internet in today's digital era, has increased the occurrence of copyright infringement and intellectual property rights. These copyrighted works on the internet have been traded without asking permission from the work's creator, for example, music, film, print book piracy.

2. Declining job availability

In today's digital era, Human Resources (HR) has been largely replaced by digital technology. Many companies/organizations today utilize digital technology in order to be efficient, for example, work in factories or the motor vehicle industry that employs employees to assemble has been replaced by smart robots with sophisticated and organized digital technology, post office personnel who used to sort mail, have been replaced by automatic sorting machines that can read and sort letters faster. As a result, the availability of jobs has decreased.

3. Bringing up digital information that does not match the facts (*hoax*)

As is known in today's digital era, people can easily access as well as create and disseminate various information. The ease in the field of information has had a negative impact, namely the amount of information that does not match the facts (*hoaxes*) carried out by irresponsible people by distorting the facts to make a public noise.

4. Giving rise to a culture of laziness (*mager*)

Another negative impact of this digital era is the emergence of a culture of laziness. Various digital platforms that are already available in a gadget have made users lazy because of addiction without paying attention to time and health.

5. Generating digital fraud in the name of others

The use of digital technology today has brought the impact of the emergence of digital fraud on behalf of others. This mode of digital fraud varies, some are in the name of surveys, there are sales of products with the lure of large discounts through unofficial e-commerce websites and so on to get personal data, other people's personal data is then used to commit fraud.

In the problem of borrowing, the problem or negative impact that arises as a result of the use of digital technology is the emergence of business businesses called illegal borrowing. This so-called illegal lending business is reported to be even related to cooperatives (Werner, 2016), where it is reported that there are a number of cooperatives that carry out loan business activities that do not have a license from the OJK; and there are also a number of business entities that carry out loan business activities under the guise of cooperatives.

Quoted from various sources, this illegal loan has caused unrest and claimed victims, especially among illegal borrowers. Following these are the stories of some of the victims of the illegal loan business as follows:

1. AES, is one of the victims of illegal borrowing in Bandung. AES told his story of being entangled in illegal borrowing. AES said it initially borrowed money online in one lending app.

But when clicked, it turns out to enter three different applications at once and there is no prior confirmation. At that time, the total loan proposed by AES was less than Rp 3 million. AES is interested because the borrower promises low interest and a tenor of 90 days. This means that it is relevant to the ability of AES who is a private employee. "As soon as I clicked, it turned out that the funds had been disbursed to the accounts of three different applications, but not according to the agreement. The money that came into my account was less than Rp 3 million," AES said. "I was surprised because the tenor was short, only 7 days. I will pay the principal installments. Finally, the bills swelled, some up to Rp 21,800,000,-, the total debt that I had to pay was Rp 48 million more," he said. During his time in illegal borrowing and paying, AES has received threats via phone and text message. "I've had a good chat asking for the tenor to be extended, they even threatened to spread my data to all my contacts on WhatsApp," AES said. AES said illegal borrowing was very miserable for the community. For example, borrow IDR 1,600,000, - but liquid only IDR 900,000, - because large administrative costs are deducted. In addition, the short tenor is only 7 days and if you pay late, you will be subject to a very large fine.

2. Adit, is a private worker, one of the victims of illegal borrowing. Adit revealed that illegal pinjols tend to express bad sentences. "Even to the extent that there is a threat to sell a wife, this is degrading, unsettling," Adit said. According to Adit, this illegal loan applicator ensnares borrowers with high interest. They determine the percentage of fines and interest as they please. If they cannot pay off their obligations, illegal borrowers carry out threats and intimidation that attack the psychic. "The terror makes us confused, panicked, worried, anxious, to common sense that does not work," Adit admitted. No wonder there are often cases of ending one's own life accompanied by a will message due to being in illegal loan debt. Adit regrets that illegal parties use personal data in an incorrect way. His promise asked for complete information from the borrower and knew someone who was made a friend of the loan, but in fact that someone was also a victim of illegal loan debt collectors. This is as experienced by Yanto, Adit's friend who is also a victim of illegal loan collector terror. "Please tell the transportation company to immediately pay the debt in the Dana Go application because your number is used as a guarantor for debt." "Immediately tell him to immediately make a payment today, because if he does not pay the number you could be indicated to be in cahoots with him in embezzlement of funds." So the debt *collector's* message made Yanto uneasy.

Such is a little picture of illegal borrowing that has caused unrest and claimed victims (Ackleson, 2005). Through this scientific work, it will be studied as the regulation of loans in laws and regulations so as to give rise to illegal borrowing (Rolobessy et al., 2023), why cooperatives, especially Savings and Loan Cooperatives (KSP) or Cooperative Savings and Loan Units (USP-Cooperatives) are associated with this problem, isn't it that in this digital era cooperatives are actually encouraged to develop savings and loans online, or because there are also cooperatives as players of this illegal loan. Then with the laws and regulations and what are the sanctions for illegal borrowing, including the methods of intimidation and terror carried out by illegal borrowers, and finally what things need to be done to overcome this. The series of questions prompted a review of this borrowing problem.

## **METHOD**

This research is a normative legal research (*legal research*) which is often synonymous with *library research*. As a normative legal research, this study uses documents as a source of data, both from journals and from the internet that describe illegal lending services that have caused anxiety, anxiety, and anxiety experienced by victims of illegal lenjol.

Data analysis is carried out by means of normative analysis, namely by discussing illegal lending services with legal norms sourced from primary legal materials, namely: namely laws and regulations, both relating to technology-based money lending services as regulated in OJK Regulation Number 77 / POJK-01 / 2016, Civil Code (KUH-Percivil), Criminal Code (KUHP), as well as Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions.

## **RESULTS AND DISCUSSION**

The legal basis of this loan is the Financial Services Authority (OJK) Regulation Number 77/POJK.01/2016 concerning Information Technology-Based Money Lending and Borrowing Services, hereinafter referred to as OJK Regulation.

In Article 1 point (3) of the OJK Regulation, technology-based lending and borrowing is the provision of financial services to bring together lenders and loan recipients in the context of making loan and borrowing agreements in rupiah. The following are some provisions in the OJK Regulation which according to the author are loopholes for the occurrence of illegal borrowing, as well as how cooperatives are linked to this illegal lending issue:

1. Form of legal entity, ownership and capital

Article 2 paragraph (1) of OJK Regulation states: "The Operator is declared as Other Financial Service Institutions. " Furthermore, in Article 2 paragraph (2) it is stated: The organizer's legal entity is in the form of:

- a. *Limited Liability Company; or*
- b. *Cooperation.*

2. Registration and licensing

Article 7 of OJK Regulation stipulates: "The operator must apply for registration and licensing to OJK."

3. Penalty

Article 47 of the OJK Regulation stipulates: "For violations of obligations and prohibitions in this OJK Regulation, OJK is authorized to impose administrative sanctions on the organizer in the form of:

- a. *Written warnings;*
- b. *A fine, that is, the obligation to pay a certain amount of money;*
- c. *Restrictions on business activities; and*
- d. *Revocation of permission.*

From what is regulated in this OJK Regulation, it is certainly understandable how this illegal loan exists and is also associated with cooperatives. Illegal borrowing exists due to the practice of organizing information technology-based lending and borrowing without permission from the OJK. The association of Cooperatives in this matter is because Cooperatives are indeed one of the Other Financial Service Institutions as providers of

information technology-based lending and borrowing services, in addition to Limited Liability Companies specified in OJK Regulations. So in the event that the Cooperative is involved in borrowing, while the Cooperative is not registered and has an OJK permit, then it becomes a Cooperative related to the problem of illegal borrowing (Olifiansyah, 2021).

Illegal borrowing associated with cooperatives is different from online cooperative savings and loans which are actually developed in today's digital era in the context of cooperative development. In Cooperative savings and loans, whether carried out conventionally/face-to-face or online, those served are members of the Cooperative itself, while in loans organized by Cooperatives, those served are the public, not members of the Cooperative. Therefore, the Cooperative must be registered and licensed by OJK as well as other legal entities that carry out loans. The existing Cooperative Savings and Loans Business License is insufficient or cannot be used as business legality for Cooperatives in organizing loans. Ahmad Zubaidi, Deputy for Cooperatives of the Ministry of Cooperatives and SMEs in his statement, Thursday, November 18, 2021, stated that 52 cooperatives were found that were considered strongly indicated to be carrying out illegal lending practices (Sugangga & Sentoso, 2020).

Related to the recent rise of illegal borrowing which has caused losses and unrest in the midst of the community, especially borrowers, according to the author not because it is difficult to obtain OJK permits, but more because of weak legal sanctions in the implementation of illegal loans. As stipulated in Article 47 of the OJK Regulation mentioned above, sanctions for violations of obligations and prohibitions on the implementation of loans are only in the form of administrative sanctions in the form of: Written warnings, fines, namely the obligation to pay a certain amount of money, restrictions on business activities, and license revocation.

This administrative sanction does not make loan organizers afraid and deterrent to organize illegal pinjol. They think that even if they are arrested for being caught committing violations, the sanctions will be at most administrative sanctions. So why should you be afraid, if the consequences of legal borrowing are supervised by the OJK and there is an obligation to make reports regularly, while if it is illegal it is not supervised by the OJK and there is no obligation to make reports regularly, it is better not to get OJK permission (Wahyuni, 2021).

So because of the weak legal sanctions, according to the author, the cause of the rise of illegal borrowing is not because of the difficulty of obtaining a loan permit from the OJK. The requirements for registration and obtaining a loan permit as specified in Articles 7-11 of the normative OJK Regulation alone, are nothing difficult.

As mentioned by the Chairman of the Investment Alert Task Force (SWI), Tongam L. Tobing quoted from the OJK page, November 3, 2021, in total from 2018 to October 2021 alone, the Task Force has closed 3,631 illegal loans.

### **Legal Consequences of Illegal Loan Closure on Loan Agreement**

As mentioned by SWI Chairman, Tongam L. Tobing, from 2018 to October 2021 alone the Task Force has closed 3,631 illegal pinjols. From a legal point of view, the closure is reasonable, because illegal loan operators have clearly violated OJK Regulations which require loan operators to be registered and obtain OJK permits. The problem is what is the legal effect of the closure of the illegal loan operator on the loan agreement, does the closure of the loan operator bring the legal consequences of the loan agreement to be automatically null and void

so that the loan recipient is no longer obliged to pay / pay off the loan as announced by the Government?

Regarding the legal consequences of the loan operator's-determination on the obligation of the loan recipient whether they still have to pay off the loan or not, according to the author, this must certainly be seen in relation to whether or not the loan agreement is valid. Is it valid for a loan agreement made by an illegal loan operator which has therefore been closed by the Government with the recipient of the loan? Answering the question of whether or not the loan agreement is valid or not, Article 1320 of the Civil Code (KUH-Percivil) determines that for the validity of an agreement, four conditions are needed:

1. *Agree those who bind themselves;*
2. *The ability to make an engagement;*
3. *A certain thing; and*
4. *A lawful cause.*

The first and second requirements are subjective and the second and third are objective. Both of these terms relate to issues of null and void (*nieteg* or null and *ab initio*) and voidable (*vernietigbaar/voidable*) of an agreement. If the objective conditions in the agreement are not fulfilled then the agreement is null and void or the agreement that was originally void, the law considers the agreement never existed. If the subjective conditions are not fulfilled then the agreement can be canceled or as long as the agreement has not been or has not been canceled by the court, then the agreement concerned still continues in force (Nayasari, 2020).

Associated with the legal conditions of an agreement as stipulated by Article 1320 of the Criminal Code-Civil Code, the loan agreement by the organizer of illegal borrowing, according to the author from the beginning is not qualified, namely does not meet subjective requirements. The non-fulfillment of subjective requirements is because the position of illegal loan operators is not recognized by law because they are not registered and have OJK permits. So it is not because the organizer of the illegal loan was closed by the Government to make the reason for the loan agreement invalid, but the invalidity of the loan agreement has indeed been since the beginning of the signing of the loan agreement. How can a Pinjol Operator who is not recognized by law be called to meet the requirements of competence and the conditions of agreeing to make an agreement, when these two requirements are two requirements for the validity of an agreement as stipulated in Article 1320 of the Civil Code. Because it does not meet the subjective requirements, the illegal loan agreement can be canceled or as long as the agreement has not been or has not been canceled by the court, the agreement in question still continues (Soesilo, 1995).

Such is the illegal loan agreement and its legal consequences, because the agreement does not meet the subjective conditions, the agreement can be canceled, and as long as it has not been or is not canceled by the court, it continues in force; and if the agreement is cancelled because the organizer of the illegal loan does not meet the subjective requirements, then Article 1451 of the Civil Code determines the legal effect: " the goods and persons thereof are restored in the state in which they were made before the engagement was made, with the understanding that everything that has been given or paid to those who are not in power, as a result of the engagement, can only be reclaimed, merely the goods are still in the hands of the powerless person, or simply it turns out that this person has benefited from what was given or paid, or that what is enjoyed has been used or is useful for its sake."

So legally there is no rule that states if the agreement is null and void or canceled then it frees the debtor to fulfill his obligations. As is known, the Government through the Coordinating Minister for Polhukam has announced to borrowers who have already become victims of illegal borrowing not to pay / pay off their loans. In addition, the Government has also closed thousands of illegal loan operators and appealed to borrowers to report to the police if they receive threats and intimidation from illegal loan operators, in an effort to overcome illegal loan operators (Priyonggojati, 2019).

The Government's move to announce to borrowers not to pay / pay off their loans to overcome the problem of illegal loan operators, according to the author is not the right step, because this step is contrary to applicable law. Illegal borrowing that is contrary to the law should be overcome in accordance with applicable law, not even by taking actions that are contrary to the law as well. However, on the contrary, the Government's action to close illegal loan operators is appropriate, because the designation is an administrative sanction that is regulated in OJK Regulations for loan operators who are not registered and have permission from the OJK. Similarly, it is appropriate to appeal to borrowers to report to the Police if illegal loan organizers make threats and intimidation.

### **Legal Aspects of Threats and Intimidation in Illegal Pinjol**

What AES and Adit have experienced as described above must have been experienced by so many victims of illegal borrowing. The question is why illegal loan organizers resort to threats and intimidation in their efforts to demand compliance and obedience of borrowers to pay/repay their loans (borrowers default), then what is the legal aspect of the threats and intimidation carried out.

Whatever the reason, billing by means of threats and intimidation is not justified. Billing by means of threats and intimidation is classified as a collection method that is not in accordance with the law. Many non-unlawful steps can be taken in loan collection. The use of BI Checking information services, for example, is one of the steps that can be taken. BI Checking is one of the information services for a person's credit history that is exchanged between banks and institutions. If a person's name is recorded in the BI Checking list, that person will experience problems in the loan process. Of course, someone does not want that to happen and will try to pay off the loan. In addition, another effort that can be taken against defaulting customers is to sue the defaulting borrower to court for default.

Thus, among other steps, loan organizers should take to deal with defaulting borrowers, not by threatening and intimidating methods. The act of threatening and intimidating carried out by illegal loan organizers is because illegal loan organizers have no way but to carry out threats and intimidation. Entering the BI Checking service and suing the court against defaulting borrowers is impossible because its existence itself is illegal or not legally recognized.

Acts of threats and intimidation carried out by the organizers of illegal loans themselves can be criminally charged. The following are criminal articles that can be charged against threats and intimidation carried out by the organizer of the illegal loan:

1. Article 62 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection. This article threatens with criminal business actors who produce and/or trade goods and/or services as specified in Article 8 paragraph (1), namely goods and/or services that, among

others, are not in accordance with the promises stated in the label, etiquette, description, advertising or sales promotion of these goods and/or services with a maximum prison sentence of 5 years and a maximum fine of IDR 2 billion. As is known from the stories of victims of illegal borrowing, illegal loan organizers often provide information or promise something that is not true in offering their products and to attract borrowers.

2. Article 46 paragraphs (1), (2) and (3) of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Information and Transactions of Electronics.

This article threatens with criminal charges any person intentionally and without rights or unlawfully violating Article 32 paragraphs (1), (2), and (3), namely intentionally and without rights or unlawfully transmitting, transferring electronic information and/or electronic documents of other people or public property with a maximum imprisonment of 8-10 years and/or a maximum fine of IDR 2-5 billion. As is known, illegal loan organizers often distribute electronic documents and indecent photos in making collections.

3. Article 335 of the Criminal Code on unpleasant acts.

This article threatens with a crime whoever against the right to force others to do or not to do or allow anything by force, by another act or by an unpleasant act with imprisonment for a maximum of one year or a fine of not more than Rp 4,500,- As is known the collection carried out by illegal loan organizers is often carried out by means of threats and intimidation, makes borrowers confused, panicked, worried, restless.

4. Article 372 of the Criminal Code on Fraud

This article threatens with a penalty whoever against the right either by using a false name or false circumstances, either by reason and deceit or by fabricating false words persuades people to give away things, makes debts or writes off receivables, with imprisonment for not more than four years. As is known, illegal loan organizers often provide information or promise something that is not true in offering their products and to attract borrowers.

### **Efforts to Overcome Illegal Pinjol**

Illegal lending organizers have clearly caused unrest in the community and hindered the development of information technology-based lending and borrowing institutions. In fact, if the implementation of information technology-based money lending is carried out following OJK Regulations on Information Technology-Based Money Lending and Borrowing Services, it will certainly greatly help the community to meet their financial needs. Unfortunately, not all loan operators follow OJK regulations, many of them are not registered and have OJK permits, and these unregistered and licensed organizers are called illegal borrowers. Because they are not registered and have OJK permits, illegal loan operators do not receive supervision from the OJK. They set loan interest and penalties at will, and collect loans at will without regard to methods and ethics in collection. This is what has clearly caused unrest in the midst of society and hindered the development of this technology-based lending and borrowing.

The government has taken various steps to overcome this problem, ranging from closing illegal loan operators to announcing to borrowers who have already become victims of illegal loans not to pay/pay off their debts (although not paying/paying off these loans according to the author is not the right step because it is contrary to applicable law), and appealing to borrowers to report to the police illegal loan operators who commit ways threats and intimidation in billing, but all these measures have not been effective in overcoming the

problem. Closing or blocking applications, websites, and cellphone numbers of illegal loan offers is clearly not enough to stop the space for illegal loan actors, because the perpetrators easily create new illegal loan applications or websites.

In connection with efforts to overcome this, some things that should also need to be done in addition to the various steps that have been taken are by conducting socialization and education to the community. Socialization and education are carried out so that people avoid illegal borrowing and understand the dangers of illegal pinjol. One easy way to educate the public to avoid illegal borrowing is: "if you receive an offer to borrow money via SMS or WA, it is definitely done by illegal borrowing that will deceive and terrorize the borrower," so avoid it.

Criminalizing unregistered pinjols and obtaining OJK permits may also be considered in an effort to overcome this illegal loan. Currently, sanctions for violations of the prohibitions and obligations in the OJK Regulation on Information Technology-Based Lending and Borrowing are only administrative sanctions in the form of: written warnings, fines, restrictions on business activities, and license revocation. This administrative sanction does not deter illegal borrowers, because even if the Government closes or blocks applications, websites, and cellphone numbers for illegal loan offers, perpetrators can easily create new illegal loan applications or websites. Therefore, criminal sanctions for violations of prohibitions and obligations in lending and borrowing information technology-based money need to be considered.

## **CONCLUSION**

Pinjol is an information technology-based loan and borrowing regulated in OJK Regulation Number 77/POJK.01/2016. The important point stipulated in this OJK Regulation is that pinjol must be held by a loan operator who is registered and has an OJK permit, pinjol organized by an unregistered and licensed organizer is illegal pinjol.

OJK regulations determine that cooperatives are one of the other financial service institutions as providers of information technology-based lending and borrowing services, in addition to limited liability companies. The association of cooperatives in the issue of illegal borrowing is due to signals that cooperatives are also involved in illegal borrowing.

Illegal borrowing with loan offers/promotions and collections that carry out threatening and intimidating methods, related to aspects of Administrative Law, Civil Law, and Criminal Law. Related aspects of Administrative Law in this matter concern the registration and licensing of loan operators, where illegal loans are not registered and have OJK permits; aspects of Civil Law are concerning loan agreements and the legal consequences of cancellation/cancellation of loan agreements, where illegal loan agreements do not meet subjective requirements so that they can be canceled, and as long as they have not been canceled or not canceled by the court, the agreement continues to apply; on the other hand, if the agreement is annulled, Article 1451 of the Civil Code provides: "The goods and persons thereof shall be restored in the state in which they were made before the engagement was made, with the understanding that everything which has been given or paid to the inpowerful persons, as a result of the engagement, can only be reclaimed, merely the goods are still in the hands of the powerless person, or simply it turns out that this person has benefited from what was given or paid, or that what is enjoyed has been used or useful for its benefit." The criminal aspect concerns offers and promotions as well as billing methods. Offers and promotions carried out in ways that are

not in accordance with what was promised violate the provisions of Article 62 paragraph (1) of Law Number 8 of 1999 concerning Consumer Protection and / or Article 372 of the Criminal Code concerning Fraud. Intentionally and without rights or against the law transmitting, transferring electronic information and/or electronic documents of others violates the provisions of Article 46 paragraphs (1), (2) and (3) of Law Number 11 of 2008 as amended by Law Number 19 of 2016 concerning Electronic Information and Transactions and/or Article 335 of the Criminal Code concerning unpleasant acts.

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