

The freedom of expression in Indonesia

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LAW, CRIMINOLOGY & CRIMINAL JUSTICE | RESEARCH ARTICLE

The freedom of expression in Indonesia

Zico Junius Fernando^{1,2*}, Pujiyono¹, Umi Rozah¹ and Nur Rochaeti¹

Abstract: The presence of social media, which the directly proportional people love, makes the community's freedom of expression even greater until it becomes uncontrollable. Some people sometimes consider social media as a tool for self-actualization, a place to work, and a place for expression. The right to freedom of expression is a fundamental human right guaranteed and has a strong meaning. However, whether it is recognized, freedom of expression is not an absolute right and can be very limited in certain circumstances. In the era of the industrial revolution 4.0, freedom of expression on social media is now regulated in Law Number 19 of 2016 concerning amendments to Law Number 11 of 2008 concerning Information & Electronic Transactions (UU ITE). The goal is at the theoretical level to limit freedom of expression in the world of social media so that people must be responsible for what they convey and test the level of maturity of the community in responding to the meaning of freedom of expression. However, in its implementation in the community, the arrangements in these rules are considered by the community to be too subjective. It is not impossible to silence creativity and freedom of expression in the era of the industrial revolution 4.0 as it is now to cause harmful things. The community can become victims of the implementation of the rules.

Subjects: Criminal Law & Practice; Criminology - Law; Public Law

Keywords: freedom of expression; human rights; democracy

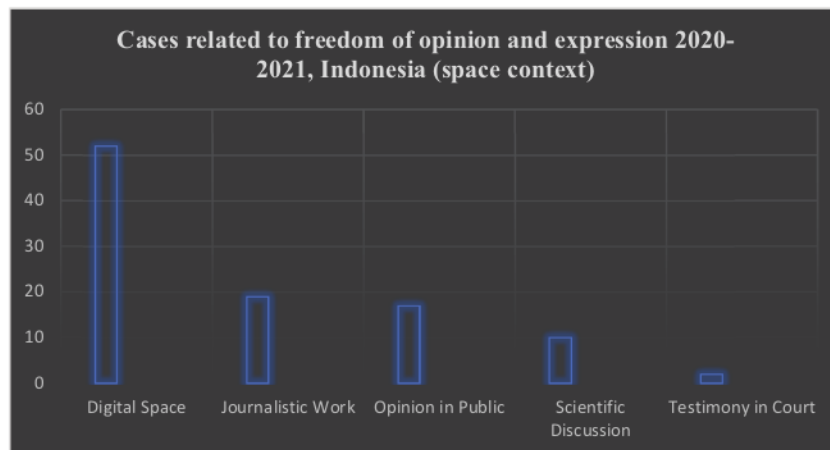
1. Introduction

The essential thing that is felt by people in Indonesia in the era of the industrial revolution 4.0 today is that all information is increasingly open so that the space for freedom of opinion is more accurate and more abundant. If likened to the era of the industrial revolution, 4.0 is an era where the exchange of information happens very quickly. Every human being can have the freedom to express his opinion through new media platforms, especially social media. (Frunita Sari, 2019) Indonesia is a state law, so it has regulations protecting human rights (HAM). The state does not give the presence of human rights (HAM). Still, human rights, according to John Locke's hypothesis, are individual natural rights owned by every human being or human since he was born. (El Muhtaj Majda, 2007, p. 29) Freedom of opinion and expression are fundamental rights that contain personal and social dimensions. They are considered "indispensable conditions for the full development of the person "essential for any society" and a "foundation stone for every free and democratic society. (Howie, 2018)

Freedom of expression and opinion in Indonesia, accompanied by access to information and communication via the Internet and social media, changes communication between people. According to data quoted from the Ministry of Communication and Information, as of 2020,

internet users in Indonesia reached 175.5 million people, with a percentage of 65.3% of the total population in Indonesia. The number of Indonesian users of social media and the Internet has resulted in a shift in the function and role of the internet community or netizens themselves. It is undeniable that society in the era of the industrial revolution 4.0 has made a communication pattern and formed an era of an interactive and dynamic information society. Ease of access to information will make people issue opinions and opinions and personal information to other people and can also respond to content from other netizens, and this phenomenon is called participatory culture.(Departemen Informasi dan Perpustakaan Universitas Airlangga, 2020) There is much positive information obtained from the Internet. However, on the other hand, the Internet, especially social media, is flooded with negative information, including hoaxes about the Covid-19 pandemic, regarding vaccines, hate speech, radicalism, terrorism, and extremism. This participatory culture in the information society has resulted in an impact where the internet community or netizens can produce and distribute information and control themselves. People will seem free to construct and represent themselves on the Internet and social media. Historically, it should be known together that the reformation era in 1998 was the primary foundation in efforts to ensure the rights of citizens to express themselves in public. 11 of 2008 concerning Information and Electronic Transactions as amended by Law Number 19 of 2016 (UU ITE). With this law, digital space is hoped to become cleaner, healthier, ethical, and more productive.

The freedom in the production and distribution of information on the Internet and social media causes the information content to be spread out of control, and there are no regulatory limits. This causes a tendency to be prone to producing fake news or hoaxes, whether only for unintentional personal interests or indeed for the interests of the organization and politics in it. In Indonesia, there are 800,000 sites indicated for spreading fake news and hate speech.(Departemen Informasi dan Perpustakaan Universitas Airlangga, 2020)



Source: National Commission on Human Rights, 2021

National Commission on Human Rights noted that during 2020-2021 there were 44 cases related to freedom of opinion and expression. This figure comes from 29 cases of public complaints and 15 cases from media monitoring conducted by the Situation Monitoring Team for Freedom of Expression and Opinion. In the context of space, from 44 cases, at least one violation of freedom of opinion and expression occurred in the digital space (Table 1-3). It dominates at (52%). Violations of freedom of opinion and expression also occur in journalistic works (19%), public opinion (17%), scientific discussions (10%), and testimony in court (2%).

Table 1. From the context of action, the majority of violations of freedom of opinion and expression occur in the form of digital attacks

No	Years	Amount	Type
1	2020	9 cases	Digital Attack
2	2021	12 cases	Digital Attack

Source: National Commission on Human Rights, 2021

Table 2. Other actions that dominate in cases of violations of freedom of opinion and expression

No	Years (2020–2021)	Amount
1	Criminalization	18 cases
2	Intimidation, Threats and Terror	8 cases

Source: National Commission on Human Rights, 2021

Table 3. There are also indications of other forms of digital attacks (2020–2021)

No	Years (2020–2021)	Amount
1	Spam Call	6 cases
2	Doxing	4 cases
3	Hoax Attack	4 cases
4	Buzzer Attack	3 cases
5	Hate Broadcast Attack	1 cases
6	Zoombombing	1 cases
7	Defacing	1 cases

Source: National Commission on Human Rights, 2021

National Commission on Human Rights also identified the pattern of digital attacks more deeply in the context of freedom of opinion and expression. There are nine forms of digital attack. Of the nine acts, acts of violence or hijacking are the highest mode in cases of violations of freedom of opinion and expression.

A few weeks go by without some new controversy over freedom of expression. Whether the point of contention involves Islamophobia, anti-Semitism, Internet pornography, or recent phenomena such as fake news, trans war, and cancel culture, citizens and scholars disagree as to whether, when, and why free speech should be regulated. (Bonotti et al., 2021) One of the many things I have learned is that simple questions about freedom of expression invariably have complex answers. (Jonathan Dimbleby, 2013)

So strong is the influence of media, such as social media, on public opinion and behavior, so the media is often referred to as the fourth estate in addition to the other three institutions; executive, legislative, and judicial. Interestingly, every interest group often uses the media for propaganda. (Zen, 2006) Freedom of expression is the inherent freedom of the individual. However, how the individual's freedom to express his or her expression depends highly on the policies set by the state as the holder of authority. Mainly on the issue of how the state gives freedom to individuals to express themselves and how the state guarantees the medium of expression to be free from intervention. (Mudjiyanto, 2019) Everyone has the right to freedom of expression; this right includes the freedom to seek, receive and impart information and ideas of any kind, regardless of frontiers orally, in writing, print, artwork, or other media of his choice.

2. Methodology

Legal research methods used by examining library materials or secondary data can be called normative legal research or library law research. (Soekanto & Mamudji, 2001) Normative legal research is in the form of library research carried out by collecting primary, secondary, and tertiary legal materials. (Marzuki, 2005) In order to get answers or solutions to problems (legal issues) that have been formulated, four models of problem-solving approaches can be used: The statute approach, conceptual approach, comparative approach. (Johni Ibrahim, 2007) The character of the research used in this study is descriptive-prescriptive. (Soekanto, 1984) The technique of collecting materials used in this research is a literature study. The literature study was done by identifying literature in legislation, books, official documents, papers, and several other sources related to this research. In connection with this study of library materials, it is also necessary to know how to write quotations, footnotes, and a bibliography. Researchers often face this problem in analyzing library materials and writing proposals and reports on research results. (Rianto Andi, 2005)

3. Freedom of expression in social media in the era of the industrial revolution 4.0

The State of Indonesia is a country that upholds democracy. One of its characteristics is the guarantee of the protection of freedom of expression or opinion. In this case, the government and the institutions concerned should respect this freedom of opinion. To be considered genuinely democratic, A-State must be prepared to provide substantial protection for the ideas of media outlets. Freedom of expression, including opinion, is one of the most fundamental rights in state life. We look at the regimes of the Old Order (1945–1965) and the New Order (1966–1998), both of them were equally strict in limiting the people's voice, let alone the freedom of the press, the media at that time was only used as a tool of government power. The struggle to place freedom of expression in the constitution at that time was not an easy matter. There were drops of sweat and blood splattered on the streets. So that the implementation of the struggle must be upheld, both by the government and the community. (DetikNews, 2019)

Social media is a new space for people to express themselves as a place where they also get social recognition, especially in the era of the industrial revolution 4.0. Social media is also a space for audiences to interact through many channels. They were bringing their conversation to a new era in the public sphere. (Altshuler, 2020) There is a reciprocal relationship between living things and their natural surroundings. In this case, there is an assumption that frames freedom of expression; namely, there is an ecological theory. The theory states that media encompasses every action; secondly, media refine our perceptions and organize our experiences. Freedom of expression is instrumental in searching for truth and informed democratic participation. (Kerr & Bailey, 2004)

Freedom of expression is a fundamental right as freedom of expression is a fundamental or fundamental right, and freedom of expression is the foundation of upholding human rights (HAM). Freedom of expression is an individual and collective right to participate in society's cultural and political life. (Longboan, 2018)

This then makes social media a new public space used by the community to accommodate the need for social recognition. Social media is where audiences can interact through many channels, bringing their conversations to a new era of public space. (Zysset, 2019) These declarations are concerned with upholding the rights of citizens not only to express any view but also to have access to the entire range of views expressed by others. The idea is that access to information allows citizens to participate in the democratic process and make informed choices that will lead to the development of society. (Hamilton & Ole Pors, 2003)

The justification for the freedom of expression is based on finding the truth and actively participating in democracy. The mill is under the perception that the freedom of expression is a way in which the truth is communicated, and more chances are given to state an opinion for

which there is a greater chance the truth can be revealed. (Vidya Prahassacitta & Harkrisnowo, 2021)

Abraham Maslow once explained that in the hierarchy of human needs, the peak is self-actualization or displaying its expression in public. Jimmy Asshiddiqie also explained that freedom of expression consists of 2 things:

The first is the freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers. The second is the right to choose the means to do so. Thus, the freedom of expression protects the substance of ideas and information and their form, their carriers, and the means of transmission and reception.

Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions regulates law enforcement against violations in the use of information technology, one of which is for individuals who use information technology media such as social media as a medium for delivering criticism. Against the government. The provisions governing these matters include, among others, Article 27 paragraph (3), Article 28 paragraph (2), Article 45A paragraph (2), and Article 45 paragraph (3) of Law Number 19 of 2016 concerning Amendments to the Law. Number 11 of 2008 concerning Information and Electronic Transactions. In the context of the rules in Indonesia, social media, in this case, indirectly gives freedom to the public to have a free opinion. However, on the other hand, it also threatens users because internal rules are considered lurking and limit freedom of opinion. In this case, social media indirectly allows the public to express their opinion freely. However, on the other hand, it is also a threat to users because there are rules in the ITE Law that are considered lurking and limit freedom of opinion. The flow of globalization, especially in the era of the industrial revolution 4.0 that hit the world today, has caused changes in all aspects of human life, especially in developing countries, including Indonesia. Changes that occur naturally also occur in changes in the field of law or regulations because community needs will change quantitatively and qualitatively. (Syaifullah Noor, 2015)

The phenomenon of freedom of information creation and distribution in social media causes free control of information content spread among netizens. This triggers the emergence of fake news, often called hoaxes, and information containing hate (hate speech). Data collected by the Ministry of Communications and Information Technology states that as many as 800,000 websites in Indonesia are spreading fake news and hate speech. (Herawati, 2016)

Social media is the most effective medium for receiving and disseminating hoax information. Users' diverse backgrounds make spreading hoax information easier because there is no need to go through a verification process. The main reason social media users spread hoax information is to influence one's opinion or attitude towards others. Another reason is to become a viral social media user. (Rahadi, 2017) In Pancasila democracy, individual freedom of opinion, association, and criticism in public is limited by several things. National stability and security, broad public interest, national ideology and ethics, and moral, social, religious, or divine rules.

4. Freedom of expression "pathology democracy or human rights?"

The concept of human rights has two dimensions. The first is that the rights that cannot be separated and revoked are human rights (from now on referred to as human rights) because they are human. These rights are moral rights that come from the humanity of every human being, and these rights aim to guarantee the dignity of every human being. The second meaning is law formation from the international and national communities. Indonesia is a state of law. One of the characteristics of a state of the law is the existence of freedom of opinion, freedom of organization, and the guarantee of the protection of human rights.

According to Article 1 Number 1 of Law Number 39 of 1999 concerning Human Rights, human rights are inherent in the nature and existence of humans as creatures of God Almighty. They are

His gifts that must be respected, upheld, and protected by the state, law, government, and everyone for the sake of honor and the protection of human dignity. The essence of human rights is an effort to maintain the safety of human existence through a balance action, namely a balance between individual interests and public interests. Freedom of expression and opinion is one of the most important categories of human rights. Freedom of expression is included in the first human rights category, especially in a democratic system. This category of rights, for example, can be found in one of the oldest referenced human rights documents, such as the French Declaration of The Rights of Man and Citizen of 1789. (Wan Hilfiana, 2020) Speaking of democracy, democracy is divided into three components: government from the people, by the people, and for the people. Each. First, the people's government refers to a legitimate and recognized government by the people. If the people recognize a legitimate government, then the government can carry out its functions in all aspects. Second, government by the people, where the government carries out its duties and functions, must be on behalf of the people, not specific individuals or groups. In addition, the people are also actively monitoring the policies and decisions made by the government within the given power (social control). (Laila, 2019)

The one-year momentum of the Joko Widodo-Ma'ruf Amin government was used by the Southeast Asia Freedom of Expression Network (SafeNet) to expose that people's right to freedom of expression in the digital space is getting worse in Indonesia. The Covid-19 pandemic caused an increase in the number of cases of the ITE Law. Whereas in 2019, cases of the ITE Law were dominated by reporting against activists, journalists, or professionals such as lecturers and lawyers. Meanwhile, in 2020, the reported parties to the ITE Law are dominated by ordinary citizens who work as private employees, homemakers, laborers, tire repairers, and fishers. Of the 59 cases, 44 were ordinary citizens. (CNN Indonesia, 2020) Before we talk about the relationship between the Internet and human rights (HAM), it is better to understand human rights in the Law (UU) RI Number 39 of 1999. Fundamental rights that are naturally inherent in human beings are universal and lasting, (which) therefore, must be protected, respected, maintained, and should not be ignored, reduced, or taken away by anyone. Law Number 39 of 1999 concerning Human Rights is a follow-up to the Decree of the People's Consultative Assembly (Tap MPR) Number VII/MPR/1998 concerning Human Rights. As for Article 14:

- (1) Everyone has the right to communicate and obtain information needed to develop their personal and social environment;
- (2) Everyone has the right to seek, obtain, possess, store, process, and convey information using all available channels.

The regulation regarding the limitation of human rights previously described according to the International Covenant on Civil and Political Rights (ICCPR) is also applied in the regulations in Indonesia, namely Article 28 J of the 1945 Constitution:

- (1) Everyone is obliged to respect the human rights of others in the orderly life of society, nation, and state;
- (2) In exercising their rights and freedoms, everyone is obliged to comply with the restrictions stipulated by law with the sole purpose of guaranteeing the recognition and respect for the rights and freedoms of others and to fulfill fair demands by considerations of morals, religious values, security and public order in a democratic society.

Freedom of expression is a right owned by every individual guaranteed by the constitution; this is contained in Article 28E paragraph (3). Article 28 F also stipulates that everyone has the right to communicate and obtain information to develop their personal and social environment and to seek, obtain, possess, store, process, and convey information using all available channels. Whereas in Article 19, the United Nations Universal Declaration of Human Rights (UDHR), which was declared on 10 December 1948, it was emphasized that everyone has the right to freedom of

opinion and expression, in this case including the freedom to hold certain opinions without interference and to seek, accept and convey information and ideas through any media without any restrictions. Although there is a guarantee of freedom of opinion and expression, exercising this right is not unlimited. What limits it is Article 29, paragraph 2 of the same declaration, which states that in exercising their rights and freedoms, everyone must be subject only to the limitations established by law for the sole purpose of ensuring the recognition and respect for human rights. The rights and freedoms of others fulfill the requirements of morality, order, and the general welfare in a democratic society. Freedom of expression is one of the fundamental rights recognized in a democratic rule of law and upholds human rights. Indonesia has guaranteed freedom of expression since the beginning of independence through the 1945 Constitution as a state of law. (Media Indonesia, 2021)

The norm of the right to freedom of expression and opinion is the most urgent right, among the entire series of human rights norms, in terms of political rights. The norm of the right to freedom of expression and opinion is considered one of the keys to democracy; the norm of the right to freedom of expression and opinion is needed to realize an accountable government. The guarantee of the right to freedom of expression and opinion always provides supervision and control by the general public to the running of the wheels of government (public control and direction). (Nasution, 2020)

From the description and study above, we can clearly understand that globally. In our country's constitution, the right of individuals to have information, opinion, and expression through various media is highly protected. As a guideline for the implementation of these rights, in general, we can refer to the principles formulated by the Free Speech Debate in the form of "10 Principles of Freedom of Expression," which are:

- (1) All human beings should be accessible and able to express themselves and to seek, receive and impart information and ideas without limits;
- (2) We defend the Internet and all other forms of communication against unauthorized intrusions by both public and private powers;
- (3) We need and create diverse open media so that we can make well-informed decisions and participate fully in political life;
- (4) We speak openly and politely about all kinds of human differences;
- (5) We allow for no taboos in the discussion and dissemination of knowledge;
- (6) We do not make threats of violence and do not accept violent intimidation;
- (7) We respect people who believe/believe in something but not on the content of their beliefs;
- (8) We all have the right to private life but must accept scrutiny if it is in the public interest;
- (9) We must be able to fight insults to our reputation without interfering with or limiting legitimate debate;
- (10) We must be free to challenge restrictions on freedom of expression and information that have been based on reasons for national security, public order, morality, and the protection of intellectual property. (Nasution, 2020)

Freedom of Expression is an absolute principle, but the Universal Declaration on Human Rights' Article 19 and other such statements identify limits that might reasonably be applied in practice. (Sturges, 2010)

Social media is a means to realize the freedom of opinion and expression. However, it should be emphasized that freedom of opinion or expression through any media is never free without boundaries and ethics. Freedom of expression is limited by the rights of others to be appropriately treated and reasonably and the rights of everyone to find a civilized and soothing public space.

Freedom of speech without ethics and respect for others will birth anarchy. (Berita Satu, 2016) Chantal Mouffe calls the “paradox of democracy” the phenomenon when democracy gives birth to freedoms that threaten social stability and national security. (BPIP, 2021) The nature of social media looks pretty accessible and seems limitless because it is online and in cyberspace; users also tend to use it freely without self-control. Social media users need to pay attention that the Indonesian government has enacted Law Number 19 of 2016 concerning Amendments to Law Number 11 of 2008 concerning Information and Electronic Transactions which regulates how internet users retrieve, use, and provide information on the Internet. The existence of the ITE Law is a clear warning for internet and social media users to be careful in using, sharing, and retrieving various personal and confidential information. In addition, one of the articles in the ITE Law also mentions defamation. In this context, all internet users can be snared by the article by simply issuing a negative statement that is offensive to a person or institution. Thus, it is increasingly important for social media users to realize that ‘freedom of expression’ must pay attention to existing ethics and regulations. (Arifin et al., 2018) Other Indonesian laws also limit forms of freedom of expression, one of which is insulting others. The Constitutional Court confirmed this in Decisions Number 50/PUU-VI/2008 and Number 2/PUU-VII/2009. (Prahassacitta & Hasibuan, 2019)

Indonesia is a country that upholds human rights and is in the form of a democratic government. Democracy is a form of government in which all citizens have equal rights in making decisions that can change their lives. Democracy can also be interpreted as a form or pattern of government that actively involves all community members and decisions taken by those given the authority. Democracy is based on popular sovereignty, implying that all have the same freedoms and obligations.

In a democracy, supreme sovereignty rests with the people. Community participation in the decision-making process is essential so that every legislation implemented and enforced truly reflects the community's sense of justice. The applicable laws and regulations may not be set and applied unilaterally by and or only for the benefit of the authorities because this is contrary to the principles of democracy. The concept of freedom of expression must comply with Pancasila democracy. If it is found that violations committed by individuals or specific individuals are found, then all these violations will harm other citizens who feel pressured and have their trust hindered. The Indonesian constitution stipulates that freedom of expression not only grants a right to express opinions according to one's conscience but what is done must also pay attention to social aspects and not interfere with or even eliminate the rights and interests of other citizens as a unitary people. Intact and submissive in Pancasila. Suppose the mechanism for freedom of expression that has been regulated in the constitution is violated. In that case, it is the same as not respecting the noble values of Pancasila as the basis and soul of the source of all sources of law in Indonesia. In an orderly, civilized society, freedom of expression cannot be absolute, raising crucial issues of the permissible limits of restrictions on freedom of expression. Such issues involve considering the nature of the restriction, its scope and extent, duration, and the presence or absence of efficacious corrective machinery to challenge the restriction. (Colive, 1993)

As a constitutional democracy, all actions must be based on a constitution inspired by Pancasila. This also includes the issue of freedom of expression. Freedom of expression must also prioritize unity, and always remember that Indonesia is a nation that is diverse in diversity and rich in culture; freedom of opinion must also pay attention to human values. In the end, the presence of the ITE Law amid digitalization is often seen as an effort to suppress freedom in expressing aspirations. The rubber article in the ITE Law also makes several names such as Ahmad Dhani, Bali Jerinx, and Gus Nur have to be involved in legal cases for violating the ITE Law. (Susanto & Irwansyah, 2021) They must understand legal and ethical risks in sharing news and information as journalists, broadcasters, public relations practitioners, advertisers, or social media managers. Even if you have never worked in media, likely, you have already created and shared personal social

media, and these posts open account users to legal liability and potential ethical lapses.(Jeremy Harris Lipschultz, 2021)

Finally, democracy in Indonesia is seen as something fundamental. This is because the values it contains are indispensable as a reference for managing the life of the nation and state that is good and right, lest freedom of expression and opinion become a pathology of democracy in human rights. There are particular limitations in a Pancasila democracy based on a constitution. The development of the Indonesian nation towards democracy is theatrical, which makes the nation touted as one of the largest democracies and can be an example for other countries.

5. Conclusion

The freedom of expression on social media is already in the human rights perspective, which relates to Law No. 19 the Year 2016 about changing Law No. 11 the Year 2008 about Electronic Transaction and Information but still not perfect with several weaknesses.

People's freedom of expression to express their opinions is the right and responsibility of a democratic country. The idea of regulating freedom of expression to express opinions on social media in Indonesia is free but bound. Social media as a public space to realize the freedom of expression and opinion encourages a participatory democracy.

Free and bound here means that every community has the right and is free to express their opinions on social media as long as no one feels aggrieved. However, misunderstandings in interpreting these rules will always exist because many still interpret these freedoms as freedom without boundaries or the pathology of democracy.

There is a close correlation between freedom of expression based on Pancasila democracy and the application of progressive law. As a constitutional democracy, every citizen must submit to the constitution.

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