



NOTARIES, MARITAL AGREEMENTS, AND WIFE'S ECONOMIC RIGHTS IN INDONESIA

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ABSTRACT

Marriage in Indonesia creates economic legal consequences, particularly regarding marital property and the protection of wives' economic rights. Marital agreements serve as preventive legal instruments to regulate property ownership, financial responsibilities, and potential asset disputes. This study aims to analyze the role of notaries in ensuring the legal certainty of marital agreements and their effectiveness in protecting wives' economic rights. This research uses a normative legal method with statutory and conceptual approaches, focusing on Indonesian marriage law, notarial authority, and Constitutional Court Decision No. 69/PUU-XIII/2015. The results show that notarial involvement strengthens the validity, legal certainty, and evidentiary value of marital agreements. Notaries also help formulate clearer and more balanced contractual clauses. However, the effectiveness of marital agreements is influenced by legal culture, public awareness, and clause quality. This study concludes that marital agreements can protect wives' economic rights when supported by fair clauses and proper notarial guidance.

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1. INTRODUCTION

Marriage within the Indonesian legal system is not only a social and religious institution but also a legal relationship that creates economic consequences for spouses. Issues concerning marital property often become sources of dispute, particularly in cases of divorce, debt obligations, or conflicts over asset ownership. In many situations, the division of marital assets does not fully reflect the economic and domestic contributions of wives, thereby placing women in a vulnerable position after the dissolution of marriage [1], [2]. This condition shows that marriage has important economic implications and requires legal instruments capable of providing certainty and protection for both parties.

The protection of wives' economic rights has become an urgent socio-legal issue in Indonesian family law. Gender equality in marriage requires legal mechanisms that can ensure a balanced distribution of rights and obligations, especially in relation to property ownership, financial responsibility, and access to economic security [3]. Strengthening women's civil and economic rights is also relevant to the development of national law, which emphasizes legal protection, substantive justice, and social welfare [4]. Without clear preventive mechanisms, wives may face economic disadvantages both during marriage and after divorce.

One legal instrument that can be used to address this issue is the marital agreement. Marital agreements allow spouses to regulate property arrangements, financial obligations, and asset separation in a clearer and more structured manner [5]. In Indonesia, the position of marital agreements has developed significantly after

Constitutional Court Decision No. 69/PUU-XIII/2015, which expanded the possibility of drafting marital agreements not only before marriage but also during marriage [6], [7]. This legal development reflects the recognition of contractual freedom in family law while also opening broader opportunities for spouses to prevent future disputes over marital property.

Previous studies have examined marital agreements as instruments for regulating property relations and preventing disputes between spouses [8], [9]. Other studies have discussed the role of notaries in ensuring the authenticity and evidentiary strength of legal deeds in civil law practice [10], [11]. However, these studies generally tend to discuss marital agreements and notarial authority separately. Limited attention has been given to the specific role of notaries in ensuring legal certainty while also assessing the effectiveness of marital agreements in protecting wives' economic rights within Indonesian family law practice. This gap indicates the need for a more focused analysis that connects notarial functions, marital agreements, and gender-based economic protection.

This study is positioned within that gap by examining marital agreements not merely as private contracts, but as legal instruments that may support the protection of wives' economic rights. Unlike previous studies that mainly emphasize the formal validity of agreements or the general function of notarial deeds, this research focuses on the relationship between notarial involvement, legal certainty, and the practical effectiveness of marital agreements in the Indonesian legal context. This positioning is important because the legal value of a marital agreement does not only depend on its formal existence, but also on the clarity, fairness, and enforceability of its clauses.

The role of notaries is central in this context. As public officials authorized to prepare authentic deeds, notaries are responsible for ensuring the legal capacity of the parties, the conformity of clauses with statutory provisions, and the formal validity of the agreement. Through notarial involvement, marital agreements may obtain stronger evidentiary value and clearer legal standing in future disputes. However, the effectiveness of marital agreements in protecting wives' economic rights is not determined solely by their authentic form. It is also influenced by the quality of contractual clauses, public legal awareness, and social acceptance of marital agreements in family relationships.

Based on the foregoing discussion, this study addresses two principal research questions:

- a. How do notaries contribute to ensuring legal certainty in marital agreements as instruments for protecting wives' economic rights within the Indonesian legal system?
- b. To what extent are marital agreements effective in protecting wives' economic rights in Indonesian family law practice?

This study aims to analyze the role of notaries in ensuring the validity and legal certainty of marital agreements and to assess their effectiveness as instruments for protecting wives' economic rights. Scientifically, this research is important because post-Constitutional Court Decision No. 69/PUU-XIII/2015, marital agreements have gained broader relevance in Indonesian family law practice. Therefore, examining the role of notaries in strengthening both legal certainty and gender-based economic protection is necessary to understand how marital agreements can function as fair, preventive, and enforceable legal instruments within the Indonesian legal system.

The Concept of Marital Agreements in Indonesian Law

A marital agreement is a legal instrument that allows spouses to regulate their legal relationship within marriage, particularly regarding property arrangements, financial responsibilities, and certain rights associated with the marital relationship. In the Indonesian legal system, marital agreements were initially permitted only prior to the conclusion of a marriage. Legal developments have introduced greater flexibility following the Constitutional Court Decision Number 69/PUU-XIII/2015, which allows spouses to establish a marital agreement during the course of the marriage [12].

Both marital agreements and agreements concluded during marriage function as mechanisms of legal protection aimed at creating a balance of rights and obligations between husband and wife. By providing clear arrangements concerning property ownership and economic responsibilities, such agreements can help prevent potential conflicts and reduce legal uncertainty in the future [13]. Moreover, the existence of a marital agreement may minimize disputes over joint marital property in the event that the marriage ends, as the respective rights and obligations of the parties have been determined in advance [14].

Nevertheless, marital agreements may also generate certain legal consequences when they contain clauses that conflict with applicable law or with the best interests of the parties. Examples include provisions concerning the transfer of child custody rights or limitations on certain legal rights that are prohibited under statutory regulations [15]. Consequently, the formulation of marital agreement clauses must take into account normative legal limitations as well as the broader principle of legal protection for the parties involved.

Freedom of Contract, Legal Certainty, and the Validity of Agreements

A marital agreement represents a concrete manifestation of the principle of freedom of contract recognized within Indonesian civil law. This principle provides parties with the autonomy to determine the substance of their agreement as long as it does not contradict the law, morality, or public order. In the context of family law, however, freedom of contract must still be situated within a framework that ensures legal certainty and protects the interests of the weaker party [16].

Legal certainty in contractual relations is not determined solely by the mutual consent of the parties but also by the legal interpretation applied to understand the substance of the agreement. A systematic and teleological interpretative approach is required to ensure that the agreement fulfills its intended function of legal protection while remaining consistent with the principles of justice embedded in family law [17]. Furthermore, legal certainty is also closely related to administrative procedures, including the registration or official recording of agreements executed in authentic form. Failure to register such agreements may lead to legal complications, particularly in terms of evidentiary value and legal recognition in future disputes [18].

The Role of Notaries in the Civil Law System

Notaries hold an important position within the Indonesian civil law system as public officials authorized to produce authentic deeds. Authentic deeds possess full evidentiary strength before the court, thereby providing legal certainty for the parties involved. In various forms of legal agreements, including marital agreements, notaries play a crucial role in ensuring that the identities of the parties, their legal capacity, and the substance of the agreement comply with prevailing legal regulations [19].

The role of a notary extends beyond administrative functions and also carries a preventive dimension. Through the process of drafting authentic deeds, notaries assist the parties in understanding the legal implications of contractual clauses and ensure that the agreement does not disadvantage either party. In practice, notarial deeds also function as instruments of legal protection due to their stronger evidentiary value compared with private agreements [20].

Moreover, the involvement of notaries in the preparation of legal documents has been shown to enhance legal certainty in various legal domains, including the protection of land rights and other civil agreements [21], [22]. This indicates that the notary's function as a guardian of formal legality remains highly relevant within the context of marital agreements.

Protection of Women's Rights in Family Law

The protection of women's rights in family law constitutes an integral component of the state's commitment to upholding human rights principles. Within the context of marriage, women often occupy a vulnerable position due to unequal domestic roles, economic dependency, and social structures that have not fully supported gender equality [23].

Legal protection for women is not limited to criminal aspects, such as cases of domestic violence, but also encompasses economic protection and civil rights within family relationships. Efforts to strengthen legal protection for women require legal instruments capable of ensuring economic security and guaranteeing access to justice in family disputes [24], [25]. In this regard, marital agreements may be viewed as a preventive legal mechanism aimed at reducing the risk of economic disadvantage for women.

Contract Effectiveness and Dispute Resolution in Legal Practice

The success of an agreement is determined not only by its legal validity but also by its effectiveness in practical implementation. Contract effectiveness relates to the ability of an agreement to prevent disputes or to provide clear solutions when disputes arise. Within the Indonesian civil law system, dispute resolution may be pursued through litigation as well as alternative dispute resolution mechanisms, including mediation and other forms of ADR [26].

The presence of dispute resolution clauses within a contract also plays a significant role in determining the effectiveness of the agreement. Clearly formulated clauses can assist the parties in achieving faster and more efficient resolutions when conflicts occur [27]. Accordingly, the quality of clause formulation in marital agreements, including those executed before a notary, becomes a crucial factor in determining the success of such agreements as instruments of legal protection.

2. RESEARCH METHODS

This study employs a normative legal research approach to analyze the role of notaries in drafting marital agreements as a mechanism for protecting wives' economic rights within the Indonesian legal system. This approach is applied by examining legal norms, statutory provisions, court decisions, and legal doctrines related to marital agreements, notarial authority, and the protection of economic rights in family law. The analysis is directed toward understanding how Indonesian positive law regulates marital agreements and how the involvement of notaries contributes to legal certainty and legal protection.

The scope of this research is limited to Indonesian positive law, particularly regulations concerning marriage, marital property, notarial authority, and the legal development of marital agreements after Constitutional Court Decision No. 69/PUU-XIII/2015. Therefore, this study does not examine marital agreements from a comparative law perspective or through empirical field research. The focus is placed on the normative relationship between marital agreements, authentic deeds, legal certainty, and the protection of wives' economic rights in Indonesian family law practice.

This research applies two main approaches: the statutory approach and the conceptual approach. The statutory approach is used to examine relevant legal instruments, including Law No. 1 of 1974 concerning Marriage, the Indonesian Civil Code, Law No. 2 of 2014 concerning amendments to the Notary Position Act, and Constitutional Court Decision No. 69/PUU-XIII/2015. These legal instruments are analyzed to identify the legal basis of marital agreements, the authority of notaries in preparing authentic deeds, and the legal consequences of marital agreements for spouses.

The conceptual approach is used to analyze the concepts of legal certainty, legal protection, freedom of contract, authentic deeds, and gender equality in family law. This approach helps explain marital agreements not merely as private contractual documents, but as preventive legal instruments that may protect wives from economic vulnerability in marriage, divorce, or asset-related disputes. Through this approach, the study assesses whether marital agreements can provide substantive protection, not only formal validity.

The legal materials used in this research consist of primary, secondary, and tertiary legal materials. Primary legal materials include statutory regulations and judicial decisions, particularly the Marriage Law, the Indonesian Civil Code, the Notary Position Act, and Constitutional Court Decision No. 69/PUU-XIII/2015. Secondary legal materials include legal textbooks, scholarly journal articles, and previous studies on marital agreements, notarial law, legal certainty, and women's economic rights. Tertiary legal materials include legal dictionaries, legal encyclopedias, and other supporting references used to clarify legal concepts relevant to the research.

The legal materials are collected through library research by reviewing statutory documents, court decisions, legal literature, and academic publications. The collected materials are then analyzed qualitatively using systematic and teleological interpretation. Systematic interpretation is applied by reading the provisions on marital agreements, marital property, and notarial authority as part of an interconnected legal framework. Teleological interpretation is used to examine the purpose of these legal norms, particularly their function in providing legal certainty, preventing disputes, and protecting wives' economic rights within marriage.

This research is based on the argument that notarial involvement in marital agreements strengthens legal certainty through authentic deeds, clearer contractual clauses, and stronger evidentiary value. However, the protective function of marital agreements does not depend solely on their formal validity. It is also determined by the fairness of the clauses, the parties' legal awareness, and the extent to which marital agreements are accepted as legitimate instruments for protecting wives' economic rights in Indonesian family law.

3. RESULT AND ANALYSIS

The Role of Notaries in Ensuring Legal Certainty in Marital Agreements

Notaries occupy a strategic position within the Indonesian civil law system as public officials authorized to draft authentic deeds. In the context of marital agreements, the involvement of a notary plays an important role in ensuring legal certainty through the verification of the parties' identities, the examination of their legal capacity, and the formulation of contractual clauses that comply with applicable statutory provisions. Notarial involvement is also essential to ensure mutual consent, compliance with formal requirements, and the enforceability of marital agreements [28]. This process gives marital agreements stronger formal validity and evidentiary value in the event of future disputes [19].

The legal certainty provided by notaries is mainly reflected in the authentic nature of the deed. Compared with private deeds, authentic deeds have stronger evidentiary force before the court because they are prepared by authorized public officials according to formal legal procedures [20]. This evidentiary strength is important in marital property disputes because it reduces uncertainty regarding the existence, date, content, and validity of the agreement. In this regard, notarial involvement transforms marital agreements from private arrangements into legally recognized instruments.

However, the existence of a notarial deed does not automatically guarantee substantive justice for wives. A notary can ensure the formal validity and evidentiary strength of a marital agreement, but the fairness of the agreement depends on the substance of its clauses and the balance of bargaining power between the parties. If the agreement only separates assets without considering the wife's economic vulnerability, unpaid domestic contributions, or future financial risks, the deed may be legally valid but substantively unequal. Therefore, legal certainty should not be understood merely as documentary validity, but also as clarity, fairness, and enforceability.

Beyond evidentiary considerations, notaries also perform a preventive function by helping formulate clauses that are clear, systematic, and consistent with legal provisions. In civil practice, the involvement of notaries has been shown to enhance legal certainty in various types of agreements, including those related to land rights protection and other civil legal relations [21], [22]. This preventive role is relevant in marital agreements because unclear clauses may create interpretative disputes between spouses. For example, a marital agreement may include clauses stating that personal debts made by one spouse for business purposes shall not automatically bind the other spouse, that assets acquired before marriage remain under the ownership of each party, and that disputes over property interpretation shall first be resolved through mediation before litigation.

Nevertheless, legal certainty is also determined by administrative compliance, including the registration or official recording of the marital agreement. Agreements that are not properly registered may create legal issues concerning their recognition and enforceability, especially when used in disputes involving third parties or marital property claims [18]. For this reason, the notary's role should not stop at drafting the deed, but should also include ensuring that the parties understand the legal consequences and fulfill the required administrative procedures.

Based on this analysis, notarial involvement is essential for strengthening the legal certainty of marital agreements, but legal certainty alone is insufficient. The authentic deed provides formal strength and evidentiary value, yet the protective function of the agreement depends on the fairness of its clauses, the fulfillment of registration procedures, and the extent to which the agreement can be implemented in practice.

Marital Agreements as an Instrument for Protecting the Wife's Economic Rights

Marital agreements can be understood as preventive legal instruments that enable spouses to regulate the economic aspects of their marital relationship in a clearer and more structured manner. In the context of protecting wives' economic rights, marital agreements may regulate asset ownership, debt responsibility, income management, separation of personal and joint property, and the distribution of economic risks when the marriage ends [29]. Such arrangements are particularly important because the division of marital property often does not fully reflect wives' non-economic contributions, including domestic work, caregiving, and child-rearing responsibilities [2], [30].

Developments in Indonesian law following Constitutional Court Decision No. 69/PUU-XIII/2015 demonstrate that the state has provided broader space for couples to regulate their property relations contractually. This decision expanded the possibility of making marital agreements not only before marriage but also during marriage [6], [7]. As a result, marital agreements are no longer limited to pre-marital arrangements but may function as flexible legal instruments that respond to changing economic conditions during marriage, such as business risks, debt obligations, inheritance, asset acquisition, or professional income.

The protective function of marital agreements can be illustrated through several normative clauses. A marital agreement may state that debts incurred by one spouse for personal or business purposes shall remain the responsibility of that spouse and shall not burden the personal assets of the other spouse. It may also regulate that the wife's income, inheritance, professional assets, or business assets remain under her control. Another clause may provide that assets acquired jointly during marriage shall be divided by considering both financial and non-financial contributions. These clauses show that marital agreements can protect wives not only by separating property, but also by clarifying economic responsibility and preventing unfair transfer of financial burdens.

However, marital agreements may also create new forms of inequality if they are drafted without attention to substantive justice. A clause that completely excludes the wife from assets acquired during marriage, even though she contributes through unpaid domestic labor, may weaken her economic position. Similarly, clauses that limit access to shared resources or impose unequal financial obligations may contradict the protective purpose of marital agreements. Therefore, the legal protection offered by marital agreements depends not merely on their existence, but on whether the clauses are proportional, transparent, and consistent with the principles of justice and equality [10].

In this context, legal education and notarial guidance become important. Legal education concerning marital property can increase women's awareness of their rights and encourage the use of marital agreements as preventive instruments against economic disadvantage [11]. From the perspective of gender equality, marital agreements should strengthen women's position within the family by giving them clearer control over economic rights and legal consequences [3]. However, this function can only be achieved if the wife understands the content of the agreement and participates in the formulation of its clauses without pressure or unequal bargaining conditions.

Thus, marital agreements can serve as instruments for protecting wives' economic rights, but their protective value depends on the quality of clause formulation and the fairness of the contractual relationship. The agreement should not be treated merely as a technical document for asset separation, but as a legal instrument that connects property regulation with gender-sensitive protection in family law.

The Effectiveness of Marital Agreements in Family Law Practice

The effectiveness of marital agreements in family law practice cannot be measured only by their formal validity. In this study, effectiveness is understood through four indicators: the ability to prevent disputes, provide legal certainty, protect wives' economic rights, and strengthen wives' bargaining position in family legal relations. These indicators are important because a marital agreement may be valid as a legal document but still ineffective if its clauses are unclear, unfair, poorly understood, or difficult to enforce.

The first indicator is the ability to prevent disputes. Marital agreements are effective when they reduce uncertainty concerning asset ownership, debt responsibility, and property division. Clear clauses can prevent conflict because the rights and obligations of each spouse have been regulated before disputes arise. However, marital agreements do not automatically eliminate disputes. Conflicts may still occur when clauses are ambiguous, when parties interpret the agreement differently, or when one party refuses to comply with the agreed provisions. Therefore, the quality of clause drafting is a central factor in determining practical effectiveness [27].

The second indicator is legal certainty. A marital agreement provides legal certainty when it is made in proper form, executed before a notary, and registered according to applicable procedures. Without these elements, the agreement may face obstacles in enforcement and recognition [18]. Nevertheless, legal certainty should not be reduced to documentary validity alone. A formally valid agreement must also be understandable, enforceable, and consistent with the broader objectives of family law. In this regard, notaries function as actors who connect formal legality with practical usability.

The third indicator is the protection of wives' economic rights. Marital agreements are effective when they prevent wives from being unfairly burdened by debts, losing control over personal assets, or being disadvantaged in marital property disputes. For instance, an agreement that separates personal debts from family assets may protect a wife from financial risks created by the husband's business activities. Likewise, a clause recognizing the wife's inheritance, salary, professional income, or business assets as her own property may strengthen her economic independence. However, this protection requires clauses that are not only legally valid but also sensitive to unequal economic positions within marriage.

The fourth indicator is the improvement of the wife's bargaining position. In practice, many couples do not fully understand the benefits of marital agreements and may still perceive them as a sign of distrust in marriage [9]. This cultural perception can limit the use of marital agreements, even though public interest in property separation arrangements has begun to increase [8]. Legal culture and public awareness therefore influence whether marital agreements are accepted as normal preventive legal instruments or rejected as socially inappropriate. This shows that legal effectiveness is shaped not only by legal norms, but also by social attitudes and public understanding.

Dispute resolution mechanisms also affect the effectiveness of marital agreements. An agreement that contains a mediation or alternative dispute resolution clause may provide a more efficient path for resolving conflicts before litigation [26]. For example, the agreement may state that disputes concerning the interpretation or implementation of property clauses shall first be resolved through mediation before being brought to court. Such clauses can reduce emotional, financial, and procedural burdens in family disputes.

Accordingly, the effectiveness of marital agreements depends on the interaction between formal validity, clear drafting, fair substance, administrative compliance, social acceptance, and accessible dispute resolution mechanisms. This sub-section shows that marital agreements are practically effective only when they operate not merely as written documents, but as enforceable and socially understood instruments of legal protection.

Theoretical Analysis: Marital Agreements as Contractual Gender Protection

The preceding discussion shows that marital agreements involve three connected dimensions: legal certainty, legal protection, and practical effectiveness. Legal certainty is strengthened through notarial involvement and the authentic form of the deed. Legal protection emerges when the content of the agreement safeguards wives' economic rights. Practical effectiveness is achieved when the agreement can be understood, accepted, implemented, and used to prevent or resolve disputes. These three dimensions form the basis for understanding marital agreements as instruments of contractual gender protection.

From a legal theoretical perspective, marital agreements can be understood as a form of preventive legal protection grounded in contractual arrangements. Legal protection does not only function after a violation occurs, but also before conflict emerges through clear regulation of property, financial responsibility, and economic risk. In marriage, this preventive function is important because economic vulnerability is often experienced gradually and may only become visible during divorce, debt disputes, or asset conflicts. Therefore, marital agreements provide a legal mechanism to anticipate economic imbalance before it develops into legal harm.

The concept of contractual gender protection places marital agreements within a broader framework of substantive equality. Although freedom of contract allows parties to regulate their legal relationship, such freedom cannot be separated from justice, human rights, and the protection of weaker parties [10]. In marital relations,

formal consent does not always reflect equal bargaining power. A wife may agree to certain clauses without fully understanding their legal consequences or without having equal negotiating power. For this reason, notarial involvement should not be limited to formal authentication, but should also support informed consent and balanced contractual arrangements.

Marital agreements also expand the meaning of legal protection for women in family law. Protection of women should not be limited to criminal law issues such as domestic violence, but should also include civil and economic dimensions, especially access to property, control over assets, and security from unfair financial burdens [24]. In this regard, marital agreements can serve as legal instruments that connect private autonomy with gender justice. They allow spouses to arrange their economic relationship while also creating safeguards against unequal consequences that may arise from marriage or divorce.

Nevertheless, contractual gender protection has limitations. It cannot rely solely on the existence of an agreement because legal documents may reproduce inequality if drafted without fairness. It also cannot depend solely on notaries because social culture, legal literacy, and the willingness of parties to respect the agreement remain decisive. Therefore, marital agreements should be viewed as one component within a broader framework of women's economic protection in family law.

Thus, marital agreements have theoretical significance not merely as private contracts, but as preventive legal instruments that can support gender-based economic justice when drafted, explained, and implemented fairly. In the Indonesian legal context, the role of notaries should be understood beyond formal deed-making. Notaries contribute to legal certainty, but the protection of wives' economic rights will only be meaningful when authentic deeds are supported by fair clauses, informed consent, administrative compliance, and social acceptance of marital agreements as legitimate instruments of family law protection.

4. CONCLUSION

This study concludes that notaries play a central role in ensuring the legal certainty of marital agreements within the Indonesian legal system. Their involvement gives marital agreements stronger formal validity, authentic evidentiary value, and clearer legal standing in potential family law disputes. However, the role of notaries should not be understood merely as administrative deed-making. Notaries also have a preventive function in guiding the parties to formulate clauses that are legally valid, clear, and proportional.

Marital agreements are also effective as instruments for protecting wives' economic rights when they provide clear arrangements concerning property ownership, debt responsibility, asset control, and the distribution of economic risks. Nevertheless, their effectiveness is not determined solely by the existence of an authentic deed. It also depends on the fairness of the clauses, the legal awareness of the parties, proper registration, and social acceptance of marital agreements in family relations.

The scientific contribution of this study lies in its argument that marital agreements should not be viewed only as private contracts between spouses, but also as legal instruments for gender-based economic protection in Indonesian family law. This perspective places marital agreements within a broader framework of legal certainty, preventive protection, and substantive justice for wives.

Based on these findings, this study recommends strengthening public legal literacy regarding marital agreements, improving the educational role of notaries, and encouraging the formulation of clauses that are more sensitive to justice and gender equality. Ultimately, the presence of notaries is important for ensuring legal certainty, but the protection of wives' economic rights will only be optimal when marital agreements are supported by fair clauses, adequate legal awareness, and broader social acceptance.

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