



ANALYSIS OF LAND OWNERSHIP DISPUTES IN THE KANJENGAN SHOPPING COMPLEX, SEMARANG CITY

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Abstract:

The study aimed to determine and analyze the legal considerations of judges regarding the ownership of disputed land rights in the Kanjengan Shopping Complex and the legal status of disputed ownership of land rights in the Kanjengan Shopping Complex. The approach method used in this study is a normative juridical approach with a case approach. This research is a descriptive analysis. The data analysis method used in this study is a qualitative descriptive data analysis method. The results of the study stated that the judge's legal considerations regarding land ownership disputes in the Kanjengan shopping complex included the Building Use Rights certificate owned by the Plaintiff, which had been issued by the National Land Agency following the applicable procedures and had complied with statutory provisions, namely Article 19 paragraph (2) of the Law No. 65 of 1960 concerning the Basic Agrarian Law juncto Article 32 paragraph (1) Government regulations (PP) No. 24 of 1997 concerning Land Registration juncto Article 1870 of the Civil Code in conjunction with Article 165 HIR where the HGB certificate is. The legal status of the ownership of land rights in dispute in the Kanjengan shopping complex is the legal owner/holder of land and building rights located in the Kanjengan Complex, Semarang, based on a Certificate of Building Use Rights and a Building Permit issued by the competent authority (Semarang City National Land Agency).

Keywords: Land rights; Building rights; Building permit.

Abstrak:

Tujuan penelitian adalah untuk mengetahui dan menganalisis pertimbangan hukum hakim terhadap kepemilikan hak atas tanah yang menjadi sengketa di Komplek Pertokoan Kanjengan serta status hukum atas kepemilikan hak atas tanah yang menjadi sengketa di Komplek Pertokoan Kanjengan. Metode pendekatan yang digunakan dalam penelitian ini adalah metode pendekatan yuridis normatif dengan pendekatan kasus. Penelitian ini adalah deskriptif analisis. Metode analisa data yang digunakan dalam penelitian ini adalah metode analisis data deskriptif kualitatif. Hasil penelitian menyatakan bahwa pertimbangan hukum hakim terhadap sengketa kepemilikan hak atas tanah di komplek pertokoan Kanjengan diantaranya sertifikat Hak Guna Bangunan yang dimiliki penggugat telah diterbitkan oleh BPN sesuai dengan prosedur yang berlaku dan telah memenuhi ketentuan perundang-undangan yaitu Pasal 19 ayat (2) Undang-Undang Nomor 65 tahun 1960 tentang Undang-Undang Pokok Agraria jo Pasal 32 ayat (1) PP No 24 tahun 1997 tentang Pendaftaran Tanah jo Pasal 1870 KUHPerdata jo Pasal 165 HIR dimana sertifikat HGB tersebut. Status hukum atas kepemilikan hak atas tanah yang menjadi sengketa di Komplek pertokoan Kanjengan pemilik yang sah/pemegang hak atas tanah dan bangunan yang terletak di Komplek Kanjengan Semarang, berdasarkan Sertifikat Hak Guna Bangunan dan Izin Mendirikan Bangunan yang dikeluarkan oleh pihak yang berwenang (Badan pertahanan Nasional kota semarang).

Kata Kunci: Hak Atas Tanah; Hak Guna Bangunan; Izin Mendirikan Bangunan.

A. Introduction

Issues related to land disputes in Indonesia in recent times seem to re-emphasize that during Indonesia's independence, the state was still unable to guarantee land rights to its people (Moertiono, 2020). One is the dispute over land ownership in the Kanjengan shopping complex, Semarang, in Decision No. 448 PK/Pdt/2014. The dispute case began when the plaintiffs or Kanjengan residents filed a lawsuit at the Semarang District Court against the Semarang City Government because, without rights and unlawfully, they had taken action to prohibit the Head of the Land Office of Semarang City from extending the building use rights to land belonging to the plaintiffs. So that the actions of Defendant I, namely the Semarang City Government, have violated existing laws because the plaintiffs have submitted authentic proof of HGB certificates and deed of sale and purchase. In the District Court's decision, the lawsuit from the plaintiffs was granted, so the city government submitted an appeal to the Central Java High Court and accepted the request, but when submitting an appeal to the Supreme Court, the appeal from the Semarang City Government was rejected, so that the government asked the Supreme Court to review the previous decisions.

Dozens of Kanjengan residents, namely the Review Respondents/Cassation Respondents / Appeals/Plaintiffs, Kauman Village, Central Semarang District, hope that the Supreme Court will issue the Judicial Review (PK) decision (MA) related to the application for renewal or extension of Building Use Rights (HGB) in the Kanjengan complex can be carried out by the Semarang City National Land Agency. Those living in the Kanjengan complex have tried to apply for an HGB extension, but the relevant institutions have not followed up on it.

The obligation to process the HGB extension underlies the decision to determine the execution of the Semarang State Administrative Court (PTUN) and the Semarang District Court (PN). Kanjengan residents continue to win the legal process related to the extension of HGB, starting at the Semarang District Court, Semarang High Court, and PK at the Supreme Court. The PN and PT decisions have existed since 2011, while the PK verdict was in 2014. The Semarang Government as the respondent, once again submitted a PK in the same case, but their application was not granted again. As is known, the Semarang City Government has dismantled a kiosk or shophouse in Kanjengan in one of the blocks in the complex.

Residents who live in the Kanjengan complex block need certainty about the extension of their HGB, which has expired since 2006. On the other hand, a spokesperson for the Kanjengan Residents Association emphasized that the stalls and shophouses occupied by its members were not demolished because they had strong evidence regarding HGB. Seven already have kiosks or shophouses with freehold status issued by the Semarang City Land Office. He claimed to have coordinated with land office officials. As a result, the land office is still waiting for a letter from the Semarang City Government stating that it is not the land owner. The land does not belong to the municipal government because its status belongs to the state.

In response to the proposal from the Kanjengan residents, the Head of General Affairs and Civil Service, the Semarang City Land Office has not been able to provide any information. So that dozens of residents in the Kanjengan complex urged the Semarang City Land Office to be able to extend the building use rights (HGB) of the shops they occupy. Despite winning at the Semarang District Court (PN) level to the Supreme Court (MA), the HGB applied to the Land Office five years ago has not been issued. A lawsuit was filed by Kanjengan residents against the Semarang City

Government as the Defendant and the Land Office as Co-Defendant, which the District Court finally decided in 2011. The City Government had submitted an appeal to the Semarang High Court, but their request was not granted. Should the Kanjengan residents win over the Semarang City Government, the HGB should have been issued. As we understand that the decision of a judge or panel of judges was originally an individual or panel decision, but when the gavel of the judge is struck as a sign of a decision, then at that time, the judge's decision must be seen as an institutional court decision (become a decision of the court institution) and has become public property. The judge's decision must be made immediately (Masnah, 2021).

The Head of the Case Handling Sub-section, the Semarang City Defense Office, emphasized that his institution had not followed up on the Kanjengan residents' request because the land is an asset of the Semarang City Government. At that time, there was a kind of agreement between the City Government and PT. Pagar Gunung Kencana is the manager of the Kanjengan complex. Whereas HGB can be issued on that land, within 30 years, it will become the property of the Semarang City Government. In the Supreme Court's decision, there was nothing to explain that the land had been crossed off the municipal government's list of assets. Because of this, there are still two ownerships, so the residents' requests (Kanjengan-red) have not been processed.

On the other hand, the residents of Kanjengan have also been asked to submit a statement letter of physical and land ownership not in dispute from the village office. However, this has not been able to be obtained by the Kanjengan residents. So that the plaintiffs, namely Kanjengan residents, applied to the Semarang State Administrative Court and judged that the Head of the Semarang Land Office and the Kanjengan Village were asked to issue a decision and/or take action according to the plaintiffs' request.

Based on the description of the background above, the problem that will be studied in this study is to analyze how the judge's legal considerations regarding land ownership disputes in the Kanjengan Shopping Complex. As well as, what is the legal status of ownership of land rights that are in dispute at the Kanjengan Shopping Complex?

B. Research Method

The approach used in this research is a normative juridical approach with a case approach. This research is a descriptive analysis. The data analysis method used in this study is a qualitative descriptive data analysis method.

C. Discussion

1. Overview of Judicial Review

Judicial review is a special legal remedy (Husma et al., 2018) because it is used against decisions that have obtained permanent legal force (Rozikin, 2019). At present, since the enactment of Law No. 14 of 1985 (published in the State Gazette of 1985 No. 73, Supplement to the State Gazette No. 3316) on 30 December 1985 as amended by Law No. 5 of 2004 concerning amendments to the Law and Law No. 3 of 2009 to amend the second time Law No. 14 of 1985, the institution of judicial review has been regulated as stated in Article 34 which states as follows: (Tumbel et al., 2021) *"The Supreme Court examines and decides on requests for judicial review at the first and final levels of court decisions that have obtained permanent legal force based on the reasons in Chapter IV Part IV of this Law."* (HSB, 2019)

2. Concept of Land Rights and Land Disputes

The civil law concept of land ownership rights is a legal relationship of ownership that is essentially recognized, upheld, respected, and cannot be contested by anyone (Tista, 2019). Ownership rights are a source of life and life for their owners. Therefore, people with legal rights must receive protection from the state (Mughtar Wahid, 2008). The emergence of a legal dispute over land stems from a complaint by a party (person/legal entity) containing objections and demands for land rights regarding land status, priority, and ownership in the hope of obtaining an administrative settlement following applicable regulations (Rusmadi Murad, 1999). According to Rusmadi Murad, land rights disputes, namely the emergence of legal disputes, begin with a complaint from a party (person/agency) containing objections and demands for land rights, both to land status, priority, and ownership in the hope of obtaining an administrative settlement following the provisions of applicable regulations (Ardani, 2017).

3. Judges' Legal Consideration of Land Rights Ownership Disputes in the Kanjengan Shopping Complex

Based on interviews conducted by the Head of the Land Dispute, Conflict and Case Handling Subsection, the Semarang City Land Office stated that land ownership disputes could arise due to several factors, either due to subject factors, object factors, or other factors (e.g., rights, etc.). Dozens of residents of Kanjengan, namely the Respondents to the Judicial Review/Respondents to the Cassation/Appellants/Plaintiffs, Kauman Village, Central Semarang District, hope that the Judicial Review Decision (PK) issued by the Supreme Court (MA) regarding the application for renewal or extension of the Building Rights Title (HGB) in the Kanjengan complex can be implemented by the Semarang City Defense Office. Residents living in Kanjengan have tried to apply for an extension of the HGB but the relevant institutions have not followed up.

The cause of land disputes in the Kanjengan Shopping Complex, Semarang, is an ownership and control dispute between the Semarang City Government and shop owners (HGB holders), where the HGB land is recorded as Semarang City Government Assets. In addition, the current development of the land dispute case in the Kanjengan shopping complex, Semarang, is still the status quo or in its previous state. The two parties accepted the judge's decision in the land dispute case at the Kanjengan Shopping Complex in Semarang. There is still no clarity because the judge is still considering whether the occupants of the Kanjengan shophouse also have HGB letters and whether some have property rights. However, residents cannot extend the HGB of the shops they occupy even though they have won the trial because the land is still registered as an asset of the Semarang City Government.

The obligation to process the HGB extension underlies the decision to determine the execution of the Semarang State Administrative Court (PTUN) and the Semarang District Court (PN). Semarang residents continue to win legal proceedings related to the HGB extension process, starting at the Semarang District Court, Semarang High Court, and PK at the Supreme Court. District Court Decisions at the Supreme Court, District Court Decisions, and the Supreme Court. District Court Decision has existed since 2011, while the PK's decision was in

2014. As the respondent, even the Government of Semarang once again submitted a PK in the same case, but their application was not granted again.

As is known, the Government of Semarang has dismantled kiosks or shophouses in Kanjengan since November 2017. The residents who live here need certainty about the extension of the HGB, which expired in 2006. On the other hand, a spokesperson for the Kanjengan Residents' Association emphasized that the stalls and shophouses occupied by its members were not demolished because they had strong evidence regarding HGB. Seven of them already have kiosks or shophouses with the status of Property Rights (HM) issued by the Semarang City Land Office. His party claimed to have coordinated with the Land Office. As a result, the Land Office is still waiting for a letter from the Semarang City Government stating that it is not the land owner even though the land does not belong to the City Government because its status belongs to the State (Limbong, 2017).

In response to the proposal from the Kanjengan residents, the Head of General Affairs and Civil Service, the Semarang City Land Office has not been able to provide any information. So that tens of residents in the Kanjengan Complex urged the Semarang City Land Office to be able to extend the Building Use Rights (HGB) of the shops they occupy. Despite winning at the Semarang District Court (PN) level to the Supreme Court (MA), the HGB that was applied to the Land Office five years ago has not been issued. A lawsuit was filed by Kanjengan residents against the Semarang City Government as the defendant and the Semarang City Land Office as a co-defendant, which the District Court finally decided in 2011. The City Government had submitted an appeal to the Semarang High Court, but their application was not granted. With the winning of Kanjengan residents against the Semarang City Government, the HGB should have been issued. As we understand that the decision of a judge or panel of judges is initially an individual or panel decision, but when the judge's gavel is knocked as a sign of decision, at that time, the judge's decision must be seen as an institutional court decision (becoming a court institution decision) and has become public property then the judge's decision must be immediately executed (Putra, 2021).

The case handling sub-section of the Semarang City Land Office emphasized that the institution has not followed up on the request of the Kanjengan residents because the land is an asset of Semarang City. At that time, there was some agreement between the City Government and PT. Pagar Gunung Kencana is the manager of the Kanjengan Complex. Whereas HGB can be issued on that land, within 30 years, it will become the property of the Semarang City Government. The Supreme Court decision did not explain that the land had been crossed off from the municipal government's list of assets. Because of that, there are still two owners, so the application of the Kanjengan residents has not been processed.

On the other hand, the residents of Kanjengan have also been asked to submit a statement of physical and land ownership without dispute from the village office. However, the Kanjengan residents have not been able to obtain this. So that the plaintiffs, namely Kanjengan residents, applied to the Semarang State Administrative Court and judged that the Head of the Semarang Land Office and the Kanjengan Village were asked to issue a decision and/or take action according to the plaintiffs' request.

The judge's legal considerations for land ownership disputes in the Kanjengan shopping complex are:

- a. The relevant letters show that the Applicant for Reconsideration, formerly the Cassation Applicant/Defendant I/Appellant, has filed a request for judicial review of the Supreme Court Decision Number 850 K/Pdt/2012 dated 24 October 2012, which has permanent legal force, in his case against the Respondents for Reconsideration formerly the Cassation Respondents/Plaintiffs/Appellants and the Co-Respondents for Reconsideration formerly the Cassation Respondents/Defendant II, III/Co-Appellants before the Semarang District Court
- b. Against the lawsuit, as mentioned earlier, Defendants I, II, and III filed an exception, which addressed the arguments related to the case.
- c. The decision of the Semarang High Court Number 336/Pdt/2011/PT.Smg dated 19 October 2011 is as follows:
 - 1) Received an appeal from Defendant I/Appellant;
 - 2) Strengthening the Semarang District Court Decision dated 15 June 2011, Number 193/Pdt.G/2010/PN.Smg, for which the appeal was requested;
 - 3) Punish Defendant I/Appellant to pay the costs of the case at both levels of justice, which for the appeal level is IDR 150,000.00 (one hundred and fifty thousand rupiahs);
- d. The decision of the Supreme Court of the Republic of Indonesia Number 850 K/Pdt/2012 dated 24 October 2012, which has permanent legal force, is as follows:
 - 1) Rejected the cassation request from the Cassation Appellant: the City Government/Mayor of Semarang;
 - 2) Punish the Cassation Petitioner/Defendant I to pay the costs of the case at this cassation level of IDR 500,000.00 (five hundred thousand rupiahs);

After the Supreme Court Decision Number 850 K/Pdt/2012 dated 24 October 2012, which has permanent legal force, was notified to the Cassation Petitioner/Defendant I/Appellant on 29 July 2013. Against him, the Cassation Appellant/Defendant I/Appellant utilizing his attorney based on Special Power of Attorney dated 21 November 2013, filed for judicial review on 31 December 2013 as evident from the Deed of Request for Judicial Review Number 193/Pdt.G/2010/PN.Smg juncto Number 09/Pdt.PK/2013/PN.Smg, which the Deputy Registrar of the Semarang District Court made. The application is accompanied by a review memory containing the reasons received at the Registrar's Office of the District Court on 31 December 2013;

- e. The quo application for review and the reasons for which have been carefully notified to the opposing party, submitted within the time limit and in the manner specified in the law, therefore the request for review can be formally accepted;

- f. The reasons put forward by the Petitioner for Review/Cassation Petitioner/Defendant I/Appellant in the review memory are basically:
 - 1) Between the same parties regarding the same matter, on the same basis by the same court, or at the same level, a decision that is contrary to one another has been given;
 - 2) There was a real mistake from *Judex Facti* and *Judex Juris*, which stated that the object of the disputed land was not State land;
- g. Plaintiffs who have HGB certificates and have owned the land since it was purchased and as buyers in good faith must receive protection and are entitled to an extension of their HGB certificates;
- h. The Reasons for Judicial Review are a repetition of matters that *Judex Facti* has considered;

Based on the above information about the judge's consideration, according to the author, the juridical basis/reason for National Land Agency refusing to follow up on court decisions that are legally binding is because it refers to Government Regulation Number 40 of 1996 concerning Building Rights, Use Rights, and Business Use Rights and in the Decree of the Minister of Home Affairs Number SK 231/HGB/DA76 at point 10 that as long as a third party with Building Rights controls the land in question, the right to own the land becomes invalid/void and after the period of building rights on the land expires (Sanjaya, 2019) then the ownership rights over the land returned to the Regional Government of the City of Semarang. Still, the National Land Agency did not have evidence that the Kanjengan Semarang land was an asset of the Regional Financial and Asset Management Office of the city of Semarang. This confirms that in this case, the plaintiffs, namely Meyliana and the other plaintiffs, have permanent legal force through court decisions as a reason to defend their land rights (Devy Tantry Anjany, Ana Silviana, 2019).

In addition, the HGB certificate owned by the Plaintiff, Meyliana, and the other plaintiffs, has been issued by the National Land Agency following applicable procedures and has fulfilled the statutory provisions, namely Article 19 paragraph (2) of Law No. 65 of 1960 concerning the Basic Agrarian Law in conjunction with Article 32 paragraph (1) of Government Regulation No. 24 of 1997 concerning Land Registration in conjunction with Article 1870 of the Civil Code in conjunction with Article 165 HIR where the HGB certificate is an authentic deed that has formal strength, material strength, and binding force so that the certificate of land rights is legal, absolute and authentic proof of ownership so that it has perfect legal force. With the judge's consideration that all the HGB certificates owned by the Plaintiff, namely Meyliana and the other plaintiffs, can be trusted and are not disputed by both parties, the plaintiffs are parties who are physically in control, among others, by occupying or carrying out business activities.

4. The legal status of the disputed ownership of land rights in the Kanjengan shopping complex

The legal status of the ownership of the disputed land rights in the Kanjengan shopping complex is legally owned by Plaintiff. By law, National Land Agency and

the Plaintiff must implement the *inkracht* court decision to extend the Plaintiff's building use rights (HGB). Obtaining land rights (SHGB) is issued by an authorized official (Surayya, 2020). The National Land Agency/Semarang City Land Office has been published/issued according to procedures. It has complied with the provisions of the applicable laws and regulations following Article 19 paragraph (2) of Law Number 5 of 1960 concerning the Basic Agrarian Law juncto Article 31 PP Number 24 of 1997 concerning Land Registration, (Susanto, 2014) as well as being a legal, absolute and authentic proof of ownership so that it has perfect legal power because all of the above-mentioned Building Use Rights Certificates (SHGB) by law can be extended and their rights increased (Rizqi, 2018). The process of obtaining a Building Permit (IMB) for the buildings owned by the Plaintiffs is issued by an authorized official (Semarang City Government) and has been issued/issued according to procedures and has complied with the provisions of the applicable laws and regulations, constitutes valid evidence, absolute, and authentic so that it has perfect legal force (Arung La'bi et al., 2021). This is based on several legal facts as follows:

- a. The Plaintiffs are parties in good faith and the legal owners of land and buildings in the Kanjengan Complex Based on the Land Rights Certificate (SHGB) and the accompanying deeds issued by the competent authority;
- b. That all the building use rights certificates mentioned above were issued by authorized officials (National Land Agency/Semarang City Land Office) and have been issued according to procedures, and have complied with the provisions of the applicable laws and regulations following Article 19 paragraph (2) of Law No. 5 of 1960 concerning the Basic Agrarian Law juncto Article 31 Government Regulation Number 24 of 1997 concerning Land Registration;
- c. Whereas therefore, all the certificates of building use rights referred to above, following Article 19 paragraph (2) letter (c) of Law Number 5 of 1960 concerning the Basic Agrarian Law juncto Article 32 paragraph (1) of Government Regulation Number 24 of 1997 regarding Land Registration in conjunction with Article 1870 of the Civil Code in conjunction with Article 165 HIR is an authentic deed, which has formal strength, material strength, and binding strength, so that the certificate of land rights is a legal, absolute and authentic proof of ownership so that it has perfect legal force. Therefore all of the buildings mentioned above use rights certificates by law can be extended and their rights increased;
- d. Based on the foregoing, it has proven the facts or reality that the acquisition of rights to the land and building (vide exhibits P-1 to P-99) has been carried out according to procedures and based on applicable law, therefore by law, the Plaintiffs are legitimate rights holders and are buyers/owners in good faith; consequently, the Plaintiffs must be protected by law;
- e. The arguments of the Plaintiffs mentioned above are supported and strengthened by the principle of law based on the permanent jurisprudence of the Supreme Court of the Republic of Indonesia Number 1230 K/Sip/1980, which states: "Those buyers who are in good faith must get legal protection";

That another thing that also proves that the Plaintiffs are the legitimate owners/holders of the rights to the land and building and parties in good faith, is that from the time the rights arose until now the Plaintiffs are the parties who have physical control (between the cloth by inhabiting and conducting business activities) over the land and building owned by the Plaintiffs. No party has denied this legal fact.

In addition, the efforts made by the National Land Agency in handling cases of land disputes in the Kanjengan Semarang shopping complex are

- a. The municipal government deleted the Kanjengan Shophouse assets into Semarang City Government assets because it should be noted that there was a management agreement between the Semarang City Government and PT. Pagar Gunung Kencana and the management agreement have ended the obligation of PT. Pagar Gunung Kencana to return the borrowed object to the Semarang City Government.
- b. The municipal government (mayor) provides a recommendation letter to the National Land Agency of Semarang City to extend the HGB of Kanjengan Shophouse. In this case, the land in the Kanjengan Shophouse Complex already has evidentiary power in the form of a Building Use Rights (HGB) certificate. The evidentiary force of the certification includes two things, namely:
 - 1) Certificates are strong evidence, meaning that as long as proven otherwise, the physical and juridical data contained in the measurement letter and land book are concerned (Rachmawati, 2021).
 - 2) A person cannot claim land that has been certified in the name of another person/legal entity if, within five years of the issuance of the certificate, the person concerned has not filed a written objection to the certificate holder and the head of the land office/not filed a lawsuit in court while the land has been acquired in good faith and is physically controlled by them or by another person or legal entity with their consent (Govianda et al., 2019).

D. Closing

Based on the research results in the previous chapter, it can be concluded that the crucial/essential thing that affects the efforts to resolve land and building ownership disputes of Kanjengan Semarang Shophouse is the legal system, the success or failure of law enforcement depends on the substance of the law, legal structure/legal institutions, and legal culture. The rule of law that becomes the judge's reference in deciding a case is the judge's legal consideration of the case of the status of Building Rights Title (HGB) in the Kanjengan shopping complex is based on the Semarang High Court Decision Number 336/Pdt/2011/PT.Smg dated 19 October 2011. In addition, the judge considered that the Building Rights Title certificate owned by Plaintiff Meyliana and the other plaintiffs had been issued by the National Land Agency following the applicable procedures and had fulfilled the statutory provisions. As well as the legal status of ownership of land rights in dispute in the Kanjengan shopping complex, it is legally owned by the Plaintiff. By law, the National Land Agency and the Plaintiff must

implement the *inkracht* court decision to extend the Plaintiff's building use rights (HGB). Suggestions that can be given are that for an agreement between the two parties to occur, it is necessary to hold mediation, considering that both parties both have strong evidence and feel they have rights to the place and building. The National Land Agency should be more careful in issuing certificates that are legal products, such as certificates of land rights, paying more attention to the history and origin of the land acquisition so as not to cause disputes in the future by the right holders.

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