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# The Logic of the Public Prosecutor's Monologue in Legal Interpretation: Tracing the Fallacy of the Public Prosecutor's Indictment in the Crime of Corruption in Indonesia

M. Adystia Sunggara [1] Rocky Marbun [2*]

[1] *Master of Law Postgraduate Program, PERTIBA STIH, Pangkalpinang, Indonesia*
[2] *Faculty of Law, Pancasila University, Jakarta, Indonesia*
[*]*Corresponding author. Email: rocky_marbun@univpancasila.ac.id*

**ABSTRACT**
The Public Prosecutor as one component of the Criminal Justice System that carries out the prosecution function is one of the functions of the government to enforce the law. In the law enforcement process, the Public Prosecutor performs knowledge production through the mechanism of legal interpretation of an act that is suspected of being an instrumental crime. Thus, the Public Prosecutor has a tendency to ignore all aspects of legal relations that contribute to an act that is suspected of being a criminal act. This instrumentalist work pattern, in the end, gave rise to an undeniable monologue logic (one-way) based on his own knowledge and understanding, ignoring normative and empirical facts. As happened in the District Court Decision Number 02/Pid.SusTpk/2021/PN. Pgp jo Decision of the District Court Number 03/Pid.Sus-Tpk/2021/PN. Pgp, where the Public Prosecutor ignores the principles in the pattern of reasoning and legal arguments. Thus, giving rise to the phenomenon of fallacy (misguided thinking) in the indictment. Therefore, it is necessary to study in depth about "how is the pattern of reasoning and arguments of the Public Prosecutor in constructing the indictment that gives rise to monologue logic as a form of fallacy?" The results of this study indicate that the construction of the Public Prosecutor's thinking based on monologue logic is due to the occurrence of fallacies which can be classified as *fallacy ad verecundiam* and *post hoc ego proper hoc fallacy*. Thus, ignoring legal protection for the people targeted by the Public Prosecutor.
***Keywords:*** *Monologue Logic, Public Prosecutor, Corruption, Fallacy, Interpretation.*

## 1. INTRODUCTION

The Prosecutor's Office of the Republic of Indonesia as a Constitutional State Organ of constitutional importance [1], which has a role in assisting high state institutions—in this case is the President as the holder of executive power, based on Article 24 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. In this position, the Prosecutor's Office has its own uniqueness, where as an institution and function, the Prosecutor's Office is a government agency that carries out the prosecution. However, on the other side of the function, the Prosecutor's Office has a function related to judicial power [2]. Therefore, the Prosecutor of government in the field of prosecution, based on Law No. 16 of 2004 on the Prosecutor of the Republic of Indonesia (Law No. 16/2004) have properties that are subject to the principle kemandiran and independence. That is, the institutional administrative, Attorney of the Republic Indonesia is subject to the mechanisms of government administration. However, functionally, there should be none of the power of the state to intervene or make Prosecutor becomes independent or not independent in carrying out its functions[3].

Based on this, the Prosecutor who has a function in carrying out the prosecution is referred to as a Prosecutor who has a functional position, as the concept is confirmed in Article 1 point 6a of the Criminal Procedure Code in conjunction with Article 1 number 1 of Law no. 16/2004. As for the implementation of the prosecution function, the working pattern of a prosecutor—who has the position of a public prosecutor, is also influenced by the legal system adopted by Indonesia and the distillation of the legal system into legal norms.

The prosecution pattern—in the context of the legal system adopted in the Continental European model, according to Taufiq Wibowo [4], the prosecutor is the main figure in the administration of criminal justice because it plays an important role in the decision- making process. Even though, at the practical level, the prosecution activity is the end result of a process of assessing the ability of investigators to carry out investigative activities. This is because a prosecutor has juridical ability and has the exclusive primary right to contact the court. In fact, in countries that adhere to Continental Europe, even though the Prosecutor does not carry out his own investigation, he still has the authority to make a decision to determine whether or not to

 

prosecute in any criminal case. Thus, the role of the prosecutor is very neutral in regulating the course of a case related to its authority to sue or not to prosecute, which is known as the *dominis litis* principle.

So, by referring to the dominis litis principle, the Prosecutor's Office—in this case including the Prosecutor as a Public Prosecutor, does not only function as a state organ that applies the law alone, but in the end, also carries out the function of creating law[5] namely making a decision to sue and not to prosecute. In other words, the Public Prosecutor—in the end, interprets the law before making the decision. The authority to interpret the law is based on the provisions in Article 14 of the Criminal Procedure Code which gives the Public Prosecutor the authority to provide instructions to investigators for the purpose of completing the material and formal requirements of the investigation file. In fact, the Public Prosecutor is given the authority—based on Article 110 paragraph (3) and paragraph (4) of the Criminal Procedure Code, to return the dossier of an investigation case, if according to the Public Prosecutor it is incomplete.

The description above implies that the Public Prosecutor is obligated to conduct research and assessment—both of which are interpretation activities, of the case files delegated by the Investigator. However, in relation to the authority of the Public Prosecutor in interpreting the law, according to Pontier[6], it is an authority for public authorities to be able to enforce the results of their decisions.

The issue of how a Public Prosecutor carries out a legal interpretation has never been a systemic study in the realm of Legal Science and Legal Practice. In fact, according to Weruin et al.[7], the ability to interpret the law, does not just appear but grows and develops through self 'habituation'. A judge, prosecutor, or lawyer who is not accustomed to interpreting the law carefully with appropriate reasoning either logically, legally, or based on other higher principles, for example based on moral principles, will not have the ability to interpret law or cases. law carefully and precisely.

As happened in District Court Decision Number 2/Pid.Sus-Tpk/2021/PN.Pgp and District Court Decision Number 3/Pid.Sus-Tpk/2021/PN.Pgp, where the Public Prosecutor constructs his legal interpretation in the Indictment and The Claim Letter stating that PT. Timah, Tbk as a State-Owned Enterprise (BUMN), so that the resulting loss is a state financial loss. Another thing which is a form of misunderstanding in the case is related to the use of Company Regulation Number: 05/Tbk/PER- 0000/2016/S11.1 on Land Tin Objects and Sea Tin
Objects and Instructions of the Directors of PT Timah Tbk Number: 1276/ Tbk/SK-0000/18-S11.2 as the basis for indicting and prosecuting a person as a perpetrator of the Criminal Acts of Corruption based on Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption, as amended in Law Number 20 of 2001.

Thus, it becomes an interesting matter to trace the ideological aspects (interests) of the Public Prosecutor in making a legal decision and the legal logic model constructed in the case. Therefore, this study will question "how is the pattern of reasoning and arguments of the Public Prosecutor in constructing the charges that give rise to monologue logic as a form of fallacy?" Thus, this study aims to reveal the aspects that influence the Public Prosecutor in bringing up a monologue logic that hides the ideological aspects (or interests) as the cause of the emergence of a legal decision to prosecute the defendant in the case.

## 2. MATERIAL AND METHODS

This research, as a research in the field of Law, use a legal research method model—as a consequence of the sui generis nature of Legal Studies. However, according to Ibrahim[8], this type of method has another advantage, namely that it allows the use of a variety of research approach models. Therefore, the researcher—in addition to using the general approach models in Legal Science, namely the case approach and conceptual approach, also uses the approach model from Social Political Science and Linguistics, namely the Semiotics approach from Rolland Barthes, the Symbolic Domination approach from Pierre-Felix Bourdieu, and Relationship Trichotomy.

The relational trichotomy as an approach model has been constructed in various scientific journals, both national and international, which aims to reveal the behavior patterns of law enforcers in making decisions based on ideological aspects (interests) [9]–[13]. The semiotic approach of Rolland Barthes is used to capture the connotative meaning that is raised by the Public Prosecutor in reading actions as (signs) that deviate from general conventions in Legal Studies. Meanwhile, PierreFelix Bourdieu's Symbolic Domination approach expresses the existence of a single meaning (grand narrative) used by the Public Prosecutor to frame an act as a criminal act of corruption.

The research model uses the approach of Social Political Science and Linguistics in the realm of Legal Studies that is juridical normative, including very rarely. Therefore, in general, research in the field of Legal Studies only observes and examines the normative aspects. For example, research conducted by Atnur Suljayestin Abdain[14], which confirms the authority of the Prosecutor, normatively, in handling corruption cases. Similarly, research conducted by Edi Syahjuri Tarigan[15], who only questioned the rule of law on the authority of the Prosecutor in prosecuting corruption, the implementation of his role and the obstacles.

The two studies only question the normative power and authority that have been previously regulated in Law no. 16/2004 as well as in Law no. 31/1999 *jo* Law no. 20/2001. Thus, the two studies are very different from this research which focuses on the ideological aspects (or interests) that influence the Public Prosecutor in interpreting the law.

## 3. RESULT AND DISCUSSION

In the District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp *jo* the District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp, there is a legal phenomenon in the form of legal interpretation from the

Public Prosecutor against the actions of the Defendants stipulated in the Indictment as an act of Corruption Crime. The two defendants were charged and charged under Article 2 Paragraph (1) *jo* Article 18 of Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption in conjunction with Article 55 Paragraph (1) 1 KUHP and Article 3 in conjunction with Article 18 of Law Number
31 of 1999 concerning Eradication of Criminal Acts of Corruption as amended by Law Number 20 of 2001 concerning Amendments to Law Number 31 of 1999 concerning Eradication of Criminal Acts of Corruption *jo* Article 55 Paragraph ( 1) the 1st Criminal Code as a Subsidiary Indictment.

The Public Prosecutor in his indictment—as contained in District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp Pgp in conjunction with District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp outlines what is essentially , Defendant AGUSTINO alias AGAT Son of TJHIE SOEN SIONG as the person who imported tin ore into the Mining and Transportation Supervision Area 1 (Batu Deer) Bangka Marine Production Unit PT
TIMAH Tbk using CV MENTARI BANGKA SUCCESS together with ALI SAMSURI Bin MUHAMMAD and TAYUDI (each of which is prosecuted separately/splitzing), between April 2019 to July 2019 or at least at a certain time in 2019, located at the Mining and Transportation Supervision Office Area 1 (Batu Rusa) Unit Marine Production Bangka PT TIMAH
Tbk or at least in a place that is included in the jurisdiction of the Corruption Court at the Pangkalpinang District Court which is authorized to investigate prosecution and adjudicating the case, has committed or participated in committing acts that are against the law, namely:

1. Doing acts that are contrary to Article 3 paragraph (1) of Law Number 17 of 2003 concerning State Finances (Law No. 17/2003);
2. Doing acts that are contrary to Article 2 paragraph (1) letter c of Law Number 19 of 2003 concerning StateOwned Enterprises (Law No. 19/2003);
3. Doing acts that are contrary to Article 40 paragraph (1) of the Regulation of the Minister of State for BUMN Number: PER- 01/MBU/2011 dated August 1, 2011 concerning the Implementation of Good Corporate Governance which has been amended by Regulation of the Minister of State for BUMN Number: PER-09/MBU/2012 dated 6 July 2012 concerning Amendments to the Regulation of the Minister of State-Owned Enterprises Number: PER01/MBU/2011concerning the Implementation of Good Corporate Governance (PERMENBUMN No. PER-01/2012);
4. Doing acts that are contrary to Article 61 paragraph (1) letter a jo Article 65 letter d jo Regulation of the Minister of Energy and Mineral Resources of the Republic of IndonesiaNumber 11 of 2018 concerning Procedures for Regional Granting, Licensing and Reporting on Mineral and Coal Mining Business Activities (PERMEN ESDM No. 11/2018);
5. Doing acts that are contrary to Article 4 paragraph (4) in conjunction with paragraph (5) of Company Regulation Number 5 of 2016 dated December 9, 2016 concerning the Management of Tin Ore in the PT TIMAH Tbk environment; and
6. Doing acts that are contrary to Article 14 paragraph (2) in conjunction with Article 15 paragraph (3) in conjunction with Article 20 paragraph (2) Decree of the Board of Directors of PT TIMAH Tbk Number 1276/Tbk/SK- 0000/18-S11.2 concerning guidelines for implementing partner procurement business in the context of land mining and marine mining cooperation within PT TIMAH Tbk.

Based on the series of regulations used by the Public Prosecutor above, the Public Prosecutor interprets that Defendant AGUSTINO and Defendant TAYUDI together with Defendant Ali Samsuri have committed acts of enriching themselves or another person or a corporation, namely enriching themselves amounting to Rp8,405,326. 452.16, which is detrimental to the State's finances or the state's economy, which has harmed PT TIMAH Tbk in the amount of Rp. 8,405,326,452.16.

Prosecutorial Authority in handling cases of Corruption, normatively, stipulated in Article 30 paragraph (1) letter d of Law No. 16/2004 which confirms the criminal law, the prosecutor has the authority to order an investigation into a specific criminal offense under the laws. Thus, the inspections on certain crimes-including corruption, unification occurs in an institution function is the function of investigation and prosecution functions in the Prosecutor institution.

The implementation of these duties and authorities is limited to Article 8 of Law No. 16/2004 which obliges each Prosecutor to act based on the law by observing religious norms, decency, morality, and is obliged to explore and uphold human values that live in society, and always maintain the honor and dignity of the profession. That is, in every action of a Prosecutor, must first perform an interpretation of his actions against the law that governs it. More explicitly it can be said that the Prosecutor has the power (authority) to interpret the law first before taking a legal action.

Efforts to interpret the law, basically, is an effort to conduct research on legal norms that will be the basis for action. Thus, none of the research activities ruled out the 'paradigm' problem. The problem of paradigm studies in the field of legal science has not developed so encouragingly. According to Farkhani, et.al. (2018), the development of legal theory and the paradigm of legal thinking still looks a lot to the classical and medieval paradigms, and it is so hegemonic from upstream to downstream, from the study of legal science to producing law and law enforcement, especially positivism. The reality that has been hegemonic for so long has in fact plunged into the abyss of legal pragmatism [16].

Paradigm positivism, it turns out has a working pattern that only examines aspects of innate, what comes to the reality of social life, regardless of the values and norms such as justice, truth, wisdom, and other underlying legal rules that, then these values cannot be captured by the five senses. Thus, as long as it is not stipulated and confirmed by law, the thinking patterns in the legal positivism paradigm—on transcendental aspects such as the values of justice, truth, wisdom and others— become neglected matters [17].

As a result, the legal view in the positivism paradigm has several characteristics, namely[18]:

1. Legal institutions are directly accessible to political forces, law is identified as equal to the state and placed under the objectives of the state (*raison d'etat*);
2. The perpetuation of an authority is the most important business in the administration of law;
3. Specialized control institutions, such as the police, become independent centers of power; they are isolated from the social context that serves to soften, and are able to resist political authority;
4. A dual law regime institutionalizes class-based justice by consolidating and legitimizing patterns of social subordination;
5. Criminal law reflects dominant values; the morality of the law will prevail; and
6. The positivism view puts forward formal legality and legal certainty, to the exclusion of substantive justice in law enforcement practice.

In the end, the effort to interpret the law, obtained scientific justification through the opinion of J.A. Pontier[6] emphasized that the process of finding the law is an act of public authority that can be enforced based on violence. Which is then described by Soerjono Soekanto[19] through the concept of law enforcement which is based on the behavior pattern (attitude) of law enforcers in applying the rules based on their discretion.

The most interesting thing is that there is a link in the pattern of legal reasoning and argumentation based on the legal positivism paradigm with the fall into legal pragmatism. The plunge into pragmatic legal action was triggered through a budgeting system that used a Performance-Based Budget System [13], so that the Attorney General's Office implemented a target system in the prosecution sector [20]. Thus, such a target system and budgeting system become one of the parameters in making a decision to sue or not to prosecute a criminal case.

Both systems, giving effect to conscience, sense of truth and related concepts, will give rise to the view that "doing what is right" can be triggered by a variety of different, but related, motives. This is what is known as civic-mindedness (awareness of the public interest). It's an understanding of what it's like to obey a rule, even if it's not in the personal interest of any individual there, because it's good for other people or for people as a whole [21]. This awareness of the public interest (civic-mindedness) serves as the "main motor" in moving patterns of reasoning and legal argumentation against legal norms on a concrete fact in criminal justice practice. However, such a situation, according to Raymond Geuss [22], if confrontedverbally, they will definitely refuse, and hide behind the legal norms that give them authority over the interpretation of the law.

As the legal facts that appear in the District Court Decision Number 2/Pid.Sus-TPK/2021/PN.Pgp *jo* the District Court Decision Number 3/Pid.Sus-TPK/2021/PN.Pgp, where the Public Prosecutor decided to indict and sued the three defendants for violating several laws and regulations and two internal regulations from PT. Timah, Tbk, namely Company Regulation Number 5 of 2016 dated December 9, 2016 concerning Management of Tin Ore within PT TIMAH Tbk and Decree of the Board of Directors of PT TIMAH Tbk Number 1276/Tbk/SK-0000/18-S11.2 concerning Guidelines for the Implementation of Partner Procurement Business in the Framework of Cooperation in Land Mining and Marine Mining in PT TIMAH Tbk.

The existence of a doxa in the world of practice—which is full of premises from the positivism paradigm, denies and rejects the function of logic in legal reasoning. The positivists assert that legal issues are only related to the verification process of data, facts or empirical experience. Law is not related to an abstraction of thought, not related to rationality and logic. So, how is legal reasoning - which is basically subject to Logic Science, is seen as something 'abstract' and not grounded[23].

The legal phenomenon in the Public Prosecutor's Indictment seems to be a legitimate truth claim within the framework of legal positivism. However, for us, theaction of the public authority—namely the Public Prosecutor, in interpreting the law is only a rationalization of a decision to form truth-games. The Public Prosecutor, through his powers and authorities based on Law no. 16/2004 and the Criminal Procedure Code, are nothing but efforts to produce knowledge driven by the ideological aspects (or interests) of the institution. Thus, the legal phenomenon that occurs actually denies part of the premises of legal positivism itself.

The state as the legislator, has the power in the realm of public law to create legal rules for the creation of order and the maintenance of national life as one of thefunctions of the formation of a state. These rules then have a function to ensure the implementation of interests in society. In the study of legal positivism, the regulation of these interests cannot be separated from the absolute essence of the teachings of positivism. The mechanics of a regulation are not only addressed to law enforcers as operators but also to individuals and/or communities whose interests intersect. Thus, such a statutory regulation, in the continental system that refers to the hegemony of legal positivism, has strict submission to the principle of legality [24]. Therefore, when submission to the paradigm of legal positivism applies in totality, then that submission [should] also have an impact on obedience to the existence of the legal principles that shape it.

So, according to Bernard Arief Sidharta[25], in solving legal problems legally, in essence, it means applying positive legal rules to the problem (case). Applying positive legal rules can only be done by contextually interpreting the legal rules to find the legal rules contained in them within the framework of the societal goals of establishing the legal rules (teleologically) which are linked to the underlying legal principle(s) by involving various other interpretation methods (grammatical, historical, systematic, sociological). In other words, the basis of legal interpretation—if it is consistent with the paradigm of legal positivism, is based on the main source of formal law, namely statutory regulations as written law. Therefore, it takes a good understanding of the sort order for the legislation in force.

Referring to the Indictment from the Public Prosecutor in the District Court Decision Number 2/Pid.Sus- TPK/2021/PN.Pgp in conjunction with the District Court Decision Number 3/Pid.Sus-TPK/2021/PN.Pgp, it appears that there is a model of error thinking (fallacy), namely *fallacy ad verecundiam*. The *fallacy ad verecundiam* model is arguing by using authority, even though the authority is irrelevant or ambiguous. Arguing by using someone's authority which is not necessarily true or related in order to defend his interests in this case the truth of his argument [26], [27]. The Public Prosecutor, expressly stated that the three Defendants—together, had violated two internal rules of PT. TIMAH, Tbk which is not part of the order of laws and regulations. Thus, PT. Timah, Tbk, namely Company Regulation Number 5 of 2016 dated December 9, 2016 concerning Management of Tin Ore within PT TIMAH Tbk and Decree of the Board of Directors of PT TIMAH Tbk Number 1276/Tbk/SK- 0000/18-S11.2 concerning Guidelines for the Implementation of Partner Procurement Efforts in the Framework of Cooperation in Land Mining and Marine Mining within PT TIMAH Tbk., cannot be used as a basis for indicting and prosecuting someone criminally. Therefore, the principle of legality— which is strongly believed by Legal Positivism adherents, has been embodied in Article 1 paragraph (1) of the Criminal Code which affirms "An act cannot be punished, except based on the strength of the provisions of the existing criminal legislation."

The *fallacy ad verecundiam* model is also seen through legal arguments as the basis for the arguments of the Public Prosecutor by using Law no. 17/2003, Law no. 19/2003, PERMENBUMN No. PER-01/2012, and PERMEN ESDM No. 11/2018. The series of laws and regulations have shown the failure of the Public Prosecutor to systematize the laws and regulations. The indication of the fallacy ad verecundiam as a failure of legal thought is seen in the existence of a knowledge production—in the process of legal interpretation, which ignores Article 14 of Law no. 31/1999 in conjunction with Law no. 20/2001 which affirms "Anyone who violates the provisions of the Law which expressly states that the violation of the provisions of the Law as a criminal act of corruption shall apply the provisions stipulated in this Law."

The four laws and regulations do not contain any norms of criminal law sanctions, even for the articles charged and prosecuted. Thus, the Public Prosecutor's understanding of the *lex certa* and *lex scripta* principlesas legal principles for establishing the legality principle has been ignored by the Public Prosecutor. As a result, the coercion of the legal argument—which is based on "*civicmindedness*", actually in the end gives rise to another model of misguided thinking, namely *Argumentum ad Baculum* (justification of arguments on the basis of power).

In addition to the *fallacy ad verecundiam* above, the behavior of forcing the arguments above for the sake of civic-mindedness, the Public Prosecutor has ignored the Constitutional Court (MK) Decision Number 01/PHPUPRES/XVII/2019 which states that companies whose shares are owned by BUMN, and there is no direct capital investment from the separated State assets which are subsidiaries of BUMN, and subsidiaries of BUMN are not BUMN. As a result of the failure to understand the verdict, the Public Prosecutor has postulated that the losses to PT TIMAH, Tbk caused by the three defendants, constituted the financial losses of PT. TIMAH, Tbk so that mutandis mutatis is a state financial loss. This pattern of reasoning is referred to as "*post hoc ergo propter hoc fallacy*".

Thus, since the decision of the Constitutional Court (MK) Number 01/PHPU-PRES/XVII/2019, the subsidiary of a BUMN is not part of the BUMN. This means that losses to the company PT TIMAH, Tbk cannot be equated with state financial losses. Therefore, as a result of the formation of civic- mindedness which influences the pattern of legal interpretation from the Prosecutor, the prosecutor has ignored the highest legal principle attached to the decision of the Constitutional Court, namely the principle of *erga omnes*.

The model of thinking through "*civic-mindedness*"—in the form of pursuing targets and the Performance-Based Budgeting (PBK) system, has negatively confirmed the legal positivism thinking pattern that thinks through mechanistic-analytic methods and closed logical systems. So, what happens is that the truth claim functions through rationalization as a truth- game wrapped by the power and authority of the Public Prosecutor.

## 4. CONCLUSION

The Public Prosecutor through the *dominis litis* principle has the authority to determine whether to prosecute or not to prosecute. This legal principle creates an obligation for the Public Prosecutor to carry out legal interpretations of concrete facts based on legal norms. However, this pattern of reasoning (logic) does not exist in a vacuum. Therefore, the ability of the Public Prosecutor in interpreting concrete facts against legal norms is limited and supervised by a concept, namely civic-mindedness. The concept grows and develops and is maintained to fulfill the ideological aspect (or interest) namely the Prosecutor's Office as a government institution, in relation to the assessment of the fulfillment of the performance targets that have been set and the

absorption of the state budget. Thus, in making the pattern of reasoning and legal argumentation, there is the formation of a monologue logic based on the will of the Public Prosecutor himself. As a result, both in the indictment and indictment, models of fallacy are created, namely the *fallacy ad verencundiam*, *Argumentum ad Baculum*, and the *post hoc ergo propter hoc fallacy*.

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