

INTRODUCTION

Women are part of a group of people whose rights are equal to men as citizens. Women are God's creatures that must be treated the same as men in all fields, including before the law women also have equal rights with men this is in accordance with Article 28 D paragraph 1 of the 1945 Constitution which reads "everyone has the right to recognition, guarantees protection and legal certainty that is just and equal treatment before the law ". In a legal country like Indonesia, according to AV Decey, three basic principles apply, namely the rule of law (*Supremacy of Law*), equality before the law (*Equality Before The Law*), and law enforcement in a way that is not contrary to the law (*Due Process of Law*).¹ The same thing according to Friedrich Julius Stahl concept of the rule of law is marked by four main elements, namely:²

- a. Recognition and protection of basic human rights.
- b. The state is based on the Trias Politica theory (separation of powers).
- c. Government is organized based on the rule of law or law (*wetmatig bestuur*).
- d. There is a state administrative court in charge of handling cases of unlawful acts by the government.

There are two types of namely: *First* law,, it is unwritten in which such law is the rule of law that lives in the community or is often said to be customary law; *Second*, written law that is made by authorized institutions and has sanctions and is coercive. The difference between the two lies in the form and sanctions. The form of unwritten law is only a regulation handed down from generation to generation and lacks strict sanctions, while written law besides having strict sanctions also has clarity about the institutions that make them.³ However, the spirit of the law and other unwritten regulations in providing legal equality for men and women have not been able to be realized. This can be seen from the problem of sexual harassment against women which is increasingly prevalent, but women victims of sexual harassment have not received legal protection to maintain their dignity. Sexual harassment against women is still considered normal or even considered not to harm the basic rights of women as creatures or citizens whose existence must be respected, both as God's creatures or as citizens. Seeing the above problems, it is deemed necessary to have legal protection for women both written and unwritten so that sexual harassment does not occur again which has resulted in the emergence of the stigma of women becoming second class in the social order (humiliated and do not get the same appreciation as men) . The results of the ratification of women's rights become a legal umbrella for women to equalize with men. However, the legal umbrella is still considered to have weaknesses, as is often the case in the field; when in public transportation women are often treated less humanely. For example "touched / held" by men; often on the road or public place women are likened to a refreshing sight of men.

According to Komnas Perempuan annual records, the number of violence against women increases each year, namely that in 2018 Violence in the public sphere reaches 3,528 cases (26%), where sexual violence ranks first in 2,670 cases (76%), followed by successively: physical violence 466 cases (13%), psychological violence 198 cases (6%), and special categories namely 191 cases of trafficking (5%), and cases of migrant workers 3 cases. The three (3) types of violence that are most common in sexual violence in the realm of community are sexual abuse (911 cases), sexual harassment (708 cases), and rape (669 cases).⁴

¹ Munir Fuady, 2009, *Teori Negara Hukum Modern*, Refika Aditama, Bandung, pp.207

² Juhaya S. Praja, 2008, *Aliran-aliran Filsafat & Etika*, Prenada Media, Jakarta, pp.135.

³ Diding Rahmat, *Implementasi Kebijakan Program Bantuan Hukum Bagi Masyarakat Tidak Mampu Di Kabupaten Kuningan*, Jurnal Unifikasi, Vol. 04 Nomor 01 Januari 2017, pp.36

⁴ https://www.komnasperempuan.go.id/file/pdf_file/2018/SIARAN%20PERS%202018/Lembar%20Fakta%20Catahu%207%20Maret%202018.pdf, diunduh Desember 2019

The need for legal protection for victims of sexual harassment is a necessity in the rule of law as a guarantee of protection and discrimination against women in Indonesia as contained in various international regulations including the Universal Declaration of Human Rights In 1948, then the International Covenant on Civil and Political Rights(Convention on Civil and Political Rights) 1966),International Covenant on Economic, Social & Cultural Rights(1966 Economic and Social Rights),Convention on Convention on the Elimination of all Forms of Discrimination Against Women(CEDAW, Convention on the Elimination All Forms of Discrimination Against Women) in 1979,Vienna Declaration(1986),Declaration on the Elimination of Violence Against Women Declaration on the Elimination of Violence (1994 against Women) in 1994, and the most monumental was the Beijing Declaration and Platform for Action(1995).⁵ So based on the background the above researcher is interested in conducting research with the title protection of victims of sexual harassment of women in Indonesia, while the issues raised are regarding the arrangements governing the legal protection of victims of sexual harassment at this time and how the forms of legal protection for victims of abuse of women, then the purpose of this research is expected to be useful theoretically and in practice for the advancement of legal knowledge, especially regarding the legal protection of victims of sexual harassment of women in Indonesia. Acts of sexual abuse do not only occur in adult women but also occur in children, this causes a concern for us. Many acts of abuse against girls result in disruption to the child's future, because sexual harassment results in disconnection and loss of confidence in the child.

On the other hand the perpetrators of sexual harassment crimes are motivated by a variety of factors, the biggest is factorthe economic factors that cause perpetrators of sexual harassment namely; the behavior of child sexual abuse cases mostly does not have a permanent job and comes from a person or family with lower economic level. There are no actors from high economic levels or rich people. The income of the actors ranges from Rp 900,000 to Rp 1,500,000 per month. Occupational employment results in low income received by perpetrators. The level of education of the perpetrators of cases of child sexual abuse in the city of Denpasar as a whole there are no perpetrators who continue their education to the college level. The education of the perpetrators is limited to elementary school, junior high school, and there are a number of actors who have succeeded in completing secondary education. The lower level of education a person will tend to behave deviant because of imperfect understanding of social norms and morals. Like the perpetrators who as a whole have a low level of education, doing deviant acts of sexual harassment. The family conditions of victims and perpetrators of cases of child sexual abuse in the city of Denpasar come from different family conditions. Most of the victims' families are broken home or divorced parents. The family condition of the perpetrators is that there are many perpetrators who live alone or separated from their families, parents, wives and children.⁶ Based on the above, it is very important to make efforts to prevent efforts by involving all stakeholders, especially in overcoming the factors that cause sexual harassment to occur, in order to reduce the level of sexual harassment both for women (adults and children).

RESEARCH METHODS

Research used by the author is normative (doctrinal) juridical. The data used in this study are secondary data, namely primary legal materials starting from the 1945 Constitution and other regulations relating to the title above, in addition there are secondary legal materials in the form of journals, previous research studies and relevant reference books.

⁵ <https://shanteukie.wordpress.com/2011/04/20/review-cedaw-implementas-konvensi-internasional-terhadap-uu-indonesia-uu-tentang-perlindungan-perempuan/> di unduh pada tanggal 2 Desember 2019 pukul 11.00 Wib

⁶ I Gusti Agung Ayu Karishma Maharani Raijaya dan I Ketut Sudibia, *Faktor-Faktor Sosial Ekonomi Penyebab Terjadinya Kasus Pelecehan Seksual Pada Anak Di Kota Denpasar*, PIRAMIDA, Volume XIII No. 1 Juli 2017., pp.15

RESULTS AND DISCUSSION

According to Satijipto Raharjo, Legal protection is to provide protection for human rights that have been harmed by others and that protection is given to the community so that they can enjoy all the rights provided by law.⁷ Then according to the CST Kansil Legal Protection is a variety of legal efforts that must be given by law enforcement officials to provide a sense of security, both mind and physical from interference and various threats from any party. Meanwhile, according to Philipus M. Hadjon, Legal Protection is a collection of rules or rules that will be able to protect one thing from another. With regard to consumers, the law provides protection of the customer's rights from something that results in the fulfillment of those rights.⁸ Legal protection is divided into two namely preventive legal protection carried out before the occurrence of criminal acts and repressive legal protection carried out after the crime occurred which in this case is a victim of a criminal offense. Law enforcement as a process which in essence is the application of directors concerning and making decisions that are strictly regulated by the law but has elements of personal valuation (Wayne La Favre) conceptually, the core and meaning of law enforcement lies in the activity of harmonizing the value relationship the values that are set out in the rules of a solid and action attitude as a series of translation of the value stage of final, to create, give birth and maintain peace of life.⁹ According to him law enforcement is strongly influenced by factors or elements namely;¹⁰

1. Legal Factors Law
2. Enforcement Factors, namely Parties that form or establish the law.
3. Factors of facilities or facilities that support law enforcement.
4. Community factors, namely the environment in which the law is applied.

Sexual harassment is the behavioral approaches associated with sex desires, including requests for sex, and other behaviors that verbally or physically refer to sex.¹¹ The treatment of acts of sexual harassment can occur anywhere and in any way. Meyer stated that in general there are three important aspects in defining sexual harassment, namely the behavioral aspect (whether it is a sexual proposition), the situational aspect (whether there is a difference in where or when the behavior arises) and the legal aspect (under what circumstances the behavior is declared illegal).¹² Based on behavioral aspects, Farley defines sexual harassment as a sexual seduction unwanted recipient, where the seduction appears in various forms both smooth, rough, open, physical and verbal and in the same direction. Common forms of sexual harassment are verbal and physical temptation, where verbal abuse is more than physical. The experts mentioned verbal abuse in the form of unwanted sexual persuasions, jokes or persistent sexual messages, asking for continuous dates even though they have been rejected, derogatory or degrading messages, suggestive or obscene comments, expressions sexist about clothing, body, women's clothing or sexual activity, requests for sexual services that are stated with indirect or open threats.¹³

Sexual harassment is the most appropriate terminology to understand the notion of sexual violence. Sexual harassment has a very wide range, ranging from verbal expressions (comments, jokes and so on) that are dirty / obscene, indecent behavior (poking, fingering, stroking, hugging and so on), showing pornographic images / obscene, assault and coercion indecent such as, forcing to kiss

⁷ Satijipto Raharjo, 2000, *Ilmu Hukum* Bandung : PT. Citra Aditya Bakti, pp 53.

⁸ <http://tesishukum.com/pengertian-perlindungan-hukum-menurut-para-ahli/> diunduh pada tanggal 7 Desember 2019 pukul 13.30 Wib.

⁹ Soerjono Soekanto, *Faktor-faktor yang Mempengaruhi Penegakan Hukum*, PT. Raja Grafindo, Jakarta, pp.5

¹⁰ *Ibid*, hal 7-8

¹¹ https://id.wikipedia.org/wiki/Pelecehan_seksual, diunduh pada tanggal 11 Desember 2019 pada pukul 12.00 Wib

¹² Sri Kurnianingsih, *Pelecehan Seksual terhadap Perempuan di Tempat Kerja*, Buletin Psikologi, Tahun XI, No. 2, Desember 2003, pp.118

¹³ *Ibid*.

or hug, threatening to make it difficult for women if they refuse to provide sexual services, until rape. Sexual harassment due to its wide range can occur anywhere as long as there is a mixture of men and women or in a homogeneous community. Sexual harassment also occurs at work. Perpetrators of sexual harassment are usually men with higher positions or colleagues. That is because in the workplace, there is a fairly intense relationship between men and women, and the work atmosphere allows the flourishing of sexual harassment practices. However, sexual harassment is also common outside of workplaces or in public places, and it is even very common to find that the perpetrators are persons unknown to victims, such as sexual harassment on public buses, on the streets, in markets and so on.¹⁴ Criminal victims are people who, individually or collectively, suffer losses resulting from acts or acts that do not violate the criminal law in force in a country, including regulations that prohibit the abuse of power. Limitation on victims of crime can be described as follows. *First*, in terms of their nature, some are individual and collective. Individual victims because they can be identified so that the protection of victims is carried out clearly, but collective victims are more difficult to identify. However Law No. 23 of 1997 concerning Environmental Management, provides a way out in the form of demanding compensation through class action.¹⁵ According to Sellin and Wolfgang, victims can be: (a) Primary Victimization, are individual victims. So the victims are individuals, not groups; (b) Secondary Victimization where the victims are groups such as legal entities; (c) Tertiary Victimization, the victims are the wider community; (d) Mutual Victimization, which is a victim is the perpetrator himself, for example prostitution, adultery, narcotics; and (e) No Victimization, it does not mean there are no victims, but the victims cannot be immediately known, for example consumers who are deceived in using a production.¹⁶

Forms of sexual harassment against women, According to the big Indonesian dictionary the definition of sexual harassment is harassment which is a form of differentiation from the verb of harassing which means to insult, look down on, ignore. While sex has a meaning related to sex or sex, matters relating to the case of intercourse between men and women. Thus, based on this understanding, sexual harassment means a form of humiliation or contempt for someone because of matters relating to sex, sex or sexual activity between men and women. The development of science and technology in the digital era, in addition to having a positive impact on life but also a negative impact, one of which is an increase in cases of sexual abuse that afflict early childhood. The impact caused by cases of sexual abuse in early childhood not only physically, but also can cause psychological trauma during his life. Proper supervision from parents can prevent our children from victims of criminal acts, especially sexual harassment.¹⁷ Sexual harassment includes sedentary behavior, talking about sexuality, touching a woman's body, trying to force a woman to commit an unwanted sexual act, inviting a date repeatedly to the point of rape. In addition, more clearly, the forms considered as sexual harassment are as follows:¹⁸

1. Flirt or attract the opposite sex with a whistle.
2. Telling dirty or dirty jokes to someone who feels it is degrading.
3. Showing pornographic images in the form of calendars, magazines, or pornographic picture books to people who don't like them.
4. Give inappropriate comments to someone's appearance, clothing or style.

¹⁴ Marcheyla Sumera, *Perbuatan kekerasan/Pelecehan Seksual terhadap Perempuan*, Lex et Societatis, Vol. I/No.2/Apr-Jun/2013

¹⁵ Lilik Mulyadi, 2004, *Kapita Selekta Hukum Pidana Kriminologi dan Victimologi*, Jakarta: Djambatan, pp. 120

¹⁶ Zvonimir Paul Separovic, 1986, *Victimology, Studies of Victim*, Zagreb, pp. 160.

¹⁷ Sri Murni, *Optimalisasi Pengawasan Orang Tua Terhadap Bahaya Pelecehan Seksual Pada Anak Di Era Digital*, KOLOKIU Jurnal Pendidikan Luar Sekolah Volume 5, Nomor 2, Oktober 2017, pp.155

¹⁸ <http://hasanxch.blogspot.co.id/2016/09/bentuk-bentuk-pelecehan-seksual.html>, diunduh pada tanggal 12 Desember 2019 pukul 14.00 Wib.

5. Touching, pinching, slapping unwantedly, kissing and hugging someone who doesn't like the hug.
6. The act shows off the body or genitals to people who are insulted by it.

Whereas Guntoro Utamadi & Paramitha Utamadi divide the categories of sexual harassment that are used on the basis of measurements in the Sexual Experience Questionnaire (SEQ), namely in a more systematic form:¹⁹

1. Gender Harassment is a statement or behavior that is degrading based on sex.
2. Seductive Behavior, namely sexual demand without threats, seduction that is indecent or degrading.
3. Sexual Bribery is bribery to do things that smell sexual by giving a promise of a reward.
4. Sexual Coercion is pressure that is accompanied by threats to do things that are sexual.
5. Sexual Assault, namely sexual assault or coercion, overt or abusive sexual harassment.

According to APINDO sexual harassment there are 5 forms, namely:²⁰

1. Physical abuse is an unwanted touch that leads to sexual acts such as kissing, patting, hugging, stroking, massaging the nape, sticking to the body or touches physical other.
2. Verbal abuse is verbal / unwanted comments about a person's personal life or body parts or appearance, including jokes and sexual comments.
3. Non-verbal harassment, namely body language and / or sexually suggestive body movements, repeated glances, staring at the lustful body, gestures with fingers, licking lips, or others.
4. Visual harassment that is showing pornographic material in the form of photos, posters, cartoons, screensavers or others, or harassment via email, SMS and other modes of electronic communication.
5. Psychological / emotional harassment, that is, requests and persistent and unwanted invitations, unwanted dating invitations, sexual insults or reproach.

Women are creatures that are no different from men, but are culturally different from men. Traditionally women appear "as the preserver of the social order and standard bearers of morality and decency". Women are protectors of social order and guardians of morality and moral values. What a heavy duty assigned to women. Even with a slight defect in a woman's behavior, a number of negative judgments will be thrown at her. Another case with men who arrogantly always feel as leaders and fighters of life, so as if they were never guilty. Therefore, if a woman becomes a victim of a crime with violence (in this case sexual harassment), the first thing that is shaken is her morality and sense of belonging. Whereas if the shaken man is his pride. The value that must be sacrificed by a woman victim of crime is far greater than the value sacrificed by a man victim of crime. For example, in Indonesia, rape victims (especially girls) will suffer shame throughout their lives. Meanwhile, the law in Indonesia does not provide enough protection for rape victims, let alone victims of sexual harassment. On the other hand, sexual harassment against women is included as a violation of human rights. Therefore our role is to participate in thinking about how to ease the burden borne by victims of incidents of sexual harassment, and participate in thinking about how to reduce the number of incidents of sexual harassment in society.²¹

The intention of domestic workers who are victims of sexual harassment to report to the police is influenced by several factors, including: The form of sexual harassment and the intensity of sexual harassment are closely related to the impact it causes. Domestic workers admit that sexual

¹⁹ Idem.

²⁰ <file:///E:/Proseding/apindo.pdf>, diunduh pada tanggal 14 Desember 2019 pukul 15.00 Wib.

²¹ Sri Endah Kinasih, *Perlindungan dan Penegakan HAM terhadap Pelecehan Seksual*, Jurnal Universitas Airlangga, hal 4-5

harassment they experience ranging from mild, moderate, to severe and the frequent perpetrators of sexual harassment to themselves make them experience fear of rape, they feel no longer holy, feel they have failed to keep the responsibilities given by the family and anxiety that bothers their minds. Religious observance is also one of the factors that raises the intention of domestic workers who are victims of sexual harassment to report to the police. Religious education obtained by the two domestic workers does not reach the religious knowledge obtained as in the pesantren environment. Sexual ethics in Javanese culture is also one of the factors that raises the intention of domestic workers of victims of sexual harassment to report to the police. In life, Javanese people are assertive about sexual ethics where sexual ethics is well maintained so as to create the integrity of community life. Violations of the rules of sex often result in a person being ostracized, ditundhung (expelled), and will get a "red stamp" from the community, besides that it is not uncommon for people to also bring sexual problems with legal aspects. Knowledge about the sexual ethics of Javanese culture is a benchmark for both domestic workers to act against sexual harassers so as to deter them from their behavior. Personality factor is also one of the factors that raises the intention of domestic workers who are victims of sexual harassment to report to the police. One of the traits possessed by domestic workers is having high self-courage. This courage is one of the milestones to fight against sexual harassment experienced by domestic workers. Whereas for the second knowledge of domestic workers the function of the Republic of Indonesia National Police is also one of the factors that raises the intention of domestic workers who are victims of sexual harassment to report to the police. The Republic of Indonesia National Police have functions in the state government in the field of maintaining security and public order, law enforcement, protection, protection, and service to the community. Whereas one of the domestic workers claimed to have gained knowledge about the functions of the police from the NGO in which they were sheltered. He was briefed and advised by an NGO coach who said that all forms of sexual harassment were immoral acts that violated the law.²²

The current regulation of victims of sexual harassment in Indonesia, Sexual harassment in the Criminal Code is not clearly stated, sexual harassment is equated with crime in the area of decency which is a crime regarding matters relating to sexual matters. In the Criminal Code (KUHP) regulated in Chapter XVI Book II with the title "Crimes Against Decency in the Book R.Soesilo". Which is contained in Article 281 which reads "Sentenced To jail forever two years and eight months or a fine of up to Rp 4,500, -: Barangsiapa intentionally damaging public decency; Whoever intentionally corrupts politeness in the face of others, who are present not of their own volition. ". Reflecting on the above article, the researcher sees that it cannot cover the various forms of sexual harassment stated above, so that there are limitations on victims of sexual harassment to report other acts of sexual harassment in non-verbal forms. The Domestic Violence Act does not directly address the language of sexual harassment while the language is violence. Regarding the forms of violence that can be committed in the household, the main arrangements are in Article 5 of Law No. 23 of 2004 which stipulates that 'every person is prohibited from committing domestic violence against persons within the scope of his household, by means of:

- a. physical violence;
- b. psychological violence;
- c. sexual assault;
- d. household neglect.

²² Nediyan Putriningsih dan Sugiyarta Stanislaus, *Intensi Pekerja Rumah Tangga Korban Pelecehan Seksual Untuk Melapor*, Intuisi Jurnal Psikologi Ilmiah, volume, 4 (3) (2012), hal. 5

Protection Policy for Victims of Sexual Harassment Against Women, Theoretically, the form of protection for victims of crime or victims of sexual harassment can be provided in various ways, depending on the suffering / loss suffered by the victim. For example, for losses that are mental / psychological, certainly the form of compensation in the form of material / money is inadequate if it is not accompanied by psychological recovery efforts of victims. Conversely, if the victim only suffers material loss, psychological services seem too excessive. So based on the description above, things that can be given to victims of sexual harassment are as follows:

1. Legal Aid, Against victims of harassment sexual who feel they need legal assistance can conduct consultations and even free legal assistance for disadvantaged people based on Law No.16 of 2011 concerning legal aid. Counseling guidance.
2. Medical treatment.
3. Strict law enforcement against sexual harassers
4. Providing legal protection in accordance with Law No. 13 of 2006 concerning Witness Protection and Victim Protection Institutions and
5. compensation.

Article 35 of Law No. 26 of 2000 concerning Human Rights Courts provides a definition of compensation, that is, losses incurred by the state because the perpetrators are unable to provide full compensation for their responsibilities. In another study, it was explained about the form of settlement, which was seeing that victims of sexual harassment did not look at the age and sex of both men and women. Sexual harassment can have a variety of effects, both psychologically, physically, and in the field of work. In dealing with revenge on the perpetrators of sexual harassment, forgiveness is a way that can be done by the victims to remove the perceived trauma. Forgiveness is something important but also difficult to do. Forgiveness cannot be done in a short time and every individual will experience a different process - different from one another.²³ The process of self-acceptance and the factors that influence and aspects that support self-confidence can be a reference for everyone to accept themselves as a whole. Support and assistance of others to resolve cases of sexual abuse greatly affect the acceptance of parents of the condition of children who are victims of sexual abuse. *First*,. Parents who have children who are victims of sexual harassment should pay more attention to children, nurture, care for and guide children directly at home and monitor the behavior of children after sexual abuse. *Second*,. Parents must continue to supervise and be aware of the school environment and play children to avoid sexual harassment by the closest person or stranger.²⁴

Equitable education in Indonesia is a very complicated problem. Inequality in education in Indonesia occurs in the poorer segments of society. Factors affecting this inequality are caused by financial or financial factors. The higher the level of education, the more expensive the costs incurred by individuals. Indonesia is a developing country where most people live at an inadequate level. Many cases of sexual abuse of children, where the perpetrators are dominated by adults and most are the closest relatives of the victim, but there are cases committed by children. This can be proven by the reports of victims' complaints that come to the authorities. The crime of child sexual abuse that occurs is a problem that requires special attention by the government because it is related to the morality of the nation's generation. In this case the court is an institution or agency relating to children as perpetrators of crime, especially in sexual crimes. Every child who is a victim or

²³ I Nyoman Bagus Darma Yudha, David Hizkia Tobing, *Dinamika Memaafkan Pada Korban Pelecehan Seksual*, Jurnal Psikologi Udayana 2017, Vol.4, No.2, hal.435-447

²⁴ Lathifa Hermayeni, Yolivia Irna Aviani, *Gambaran Penerimaan Diri Orangtua Terhadap Anak Yang Menjadi Korban Pelecehan Seksual*, Jurnal RAP UNP, Vol. 7, No. 1, Mei 2016, hlm. 44-54

perpetrator of sexual violence or is in conflict with the law has the right to be kept confidential. Every child who is a victim or criminal offense is entitled to legal assistance and other assistance.²⁵

CONCLUSION

The need for strengthening regulatory policies for victims of sexual harassment in Indonesia so that victims of sexual harassment have the courage and strength to report to the police for their actions. Furthermore, if necessary it is necessary to request protection from the Witness and Victim Protection Agency (LPSK). In addition, there needs to be a revision of the provisions of article 281 of the Criminal Code on decency for not adopting all forms of sexual harassment that exist today. There is a need for customary law enforcement of sexual harassment that is adjusted to the local legal wisdom of each custom / local area. The form of legal protection policy for women victims of sexual harassment is by: memberikan bantuan hukum, konseling, pengobatan medis, penindakan pelaku secara maksimal, memberikan ganti rugi dan kompensasi.

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²⁵ Dewi Fiska Simbolon, *Minimnya Pendidikan Reproduksi Dini Menjadi Faktor Penyebab Terjadinya Pelecehan Seksual Antar Anak*, *SOUMATERA LAW REVIEW*, Volume 1, Nomor 1, 2018, hlm.43

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