



Jurnal Pendidikan Geografi:

Kajian, Teori, dan Praktik dalam Bidang Pendidikan dan Ilmu Geografi, 28(1), 2023, 96-106

ISSN: 0853-9251 (Print): 2527-628X (Online)

DOI: 10.17977/um017v28i12023p96-106

Protection on the territory and customary rights of Cibarani Wewengkon in Lebak Regency, Banten, Indonesia

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Paper received: 16-03-2022; revised: 08-06-2022; accepted: 29-08-2022

Abstract

This study examines the influencing factors of policies related to customary rights or *Wewengkon* implementation in the Cibarani indigenous peoples, affecting the destruction of Leuweng Titipan Mount Liman. The protection and supervision of the Cibarani *Wewengkon* are regulated by the Lebak Regional Government Number 8 of 2015 concerning the Recognition, Protection, and Empowerment of the *Kasepuhan* Customary Law Community. However, despite getting supervision and protection, natural damage caused by unlicensed gold miners continues to wreak natural harm. As a result, two hectares of forest on Mount Liman were deforested. This research used a qualitative research approach and collected data through a literature study. The results indicated that the influencing factors of inadequate protection for the Cibarani *Wewengkon* are the ignorance of the Lebak Regional Government regarding the supervision and protection of the Cibarani *Wewengkon*. Their insensibility is induced by the issues in transmission of information or poor communication between policymakers, such as the Lebak Regency house of representative and the regent, resulting in vague details on the authority to safeguard and supervise.

Keywords: Cibarani *Wewengkon*; geographic area; community customary rights; Banten

1. Introduction

Indigenous society is a group of people with a legal entity, a ruler, and a territory regulated based on common rights (Deda & Mofu, 2014). The indigenous society lives in an area with customary law regulating the natural order of indigenous people, primarily their obligation to maintain nature sustainability (Purnomo et al., 2021; Stacia, 2020). Their responsibility to preserve nature is imposed due to their excessive reliance on natural resources, such as the forest, clean water, and other resources, resulting in high motivation to organize the land sustainably, following their local hereditary procedures and customs (Reytar & Vetu, 2017). This local custom-based land management becomes a means of maintaining the ancestral cultural values in society for natural and sustainable environmental protection and governance. The same intent has also been ruled within Law number 32, of the Year 2009, concerning the protection and way of life based on the local custom.

Geographical structure within the jurisdiction and authority of the indigenous territory is essential for humans as it aids the management and utilization of resources while also ensuring their preservation. The indigenous people's rights to control and manage that territory are commonly referred to as customary rights (Wahyuni & Solina, 2021). Customary rights are the rights attached to a particular society that reflects their difference from other societies, including the distinctive authority and power to regulate their land (Samosir, 2013). As defined in the 1945 Constitution article 18B paragraph 2 that customary law is a set of authorities and power bestowed to the indigenous society in relation to the land management in their area. This definition expresses the government's acknowledgment, appreciation, and protection of the indigenous people (Ratih, 2021).

In addition, the protection for customary rights is also coordinated in the Regulation of Ministry of Agrarian Affairs and Spatial Planning Number 5 of the Year 2015 on the procedures of determining the communal rights upon the land of indigenous people and other groups of people in a specific area. However, the protection of customary rights has not been properly implemented. A number of issues related to customary rights have been reported, such as the disputes on indigenous lands (Laurette, 2021; Pellokill, 2021; Rasyad, 2019), exploitation of natural resources in the indigenous land by illegal miners (Amin, 2016; Kurniasari et al., 2017; Kuap, 2017) and the unlawful annexation on the indigenous territory by companies (Firdausi, 2017; Hadi, 2021; Lubis, 2021). Those issues result in environmental devastations in the indigenous territory (Nurhidayah, 2017), the disappearance of indigenous people's livelihoods, and horizontal conflicts as the indigenous people fight for their customary rights (Suharko, 2016). Those problems indicate poor government protection of customary rights (Mulyani, Fathani, & Purnomo, 2020). Consequently, the indigenous people constantly face losing when dealing with the investors and capital holders of land and other resources management (Prasetyo, 2018).

The same customary rights issues harming the environment are also encountered by the Cibarani indigenous people in Lebak regency, Banten, Indonesia. The illegal gold mining in *Wewengkon* (Cibarani indigenous territory) damaging the Cawisan or Titipan Leuweng (forest) in the Liman Mountain area has been reported (Irawan, 2021). Leuweng Titipan is an indigenous territory ruled by customary law and is currently used as a reserve for land and natural resources management (Iskandar & Supangkat, 2017). The Cibarani indigenous people rely heavily on the Liman Mountain as they farm and attain food supplies from the area (Khoirunnas, 2021). However, the gold in Liman Mountain has attracted illegal miners. Consequently, two hectares of forest in the Liman area were deforested, leaving two to four meters of excavated areas (Darmawan, 2021).

Aside from the loss of food supplies for Cibarani indigenous people, the destruction in Liman Mountain has also resulted in a number of natural disasters, such as floods and mudslides. This disaster occurs due to Liman Mountain's role as the upstream for big rivers, such as the Cijung, Ciliman, Cocarogol, and Cibeureum Rivers (Rifai, 2021). Thus, the disasters can also possibly occur outside the Lebak Regency, in some areas of Banten, Indonesia, as has long been concerned by the *Kesepuhan* (the elders) of the Cibarani indigenous society when the Liman Mountain was damaged. The damages remain to be reported even when the Liman Mountain has been registered as the forest of the Cibarani indigenous society that should be protected by the Government of Lebak Regency through the enactment of Regional Law number 8 of the Year 2015 on the Recognition, Protection, and Empowerment of the

Customary Law Community. However, poor protection has allowed illegal mining activities in Cibarani *Wewengkon*, damaging Liman Mountain.

A study focusing on the investigation of the Lebak government's protection of customary rights through the implementation of Regional Law No 8 of the Year 2015 is necessary to identify the influencing factors for the low protection of the Cibarani *Wewengkon*. A number of previous studies have investigated the protection of customary rights, such as the non-strict implementation of the basic agrarian law in determining the land rights for the customary rights references (Yarsina, 2018; Siahaan, 2018; Pradana et al., 2020) disputes on the indigenous land caused by the low policies protecting the customary rights (Lah, 2018; Rasyad, 2019; Laturette, 2021), the influence of tourism on the indigenous territory (Prasetyo et al., 2021), and obscurity of indigenous territory ownership (Buan, 2017; Mahfud, 2017; Saija et al., 2020)

In short, most of the previous studies mainly focused on numerous aspects, namely: 1) the regulation, 2) the uncertain ownership status of the indigenous territory, and 3) poor protection of customary rights, resulting in disputes. Different from those studies that focus on the disputes on the indigenous territory, this study exclusively examined the influencing factors of the implementation of policies related to the customary rights of Cibarani indigenous society, regulated in the Regional Law No 8 of the Year 2015 concerning recognition, protection, and empowerment of indigenous people. The results of this study were expected to help us reveal the factors affecting poor regional government protection of the Cibarani customary rights.

Therefore, this study aims to investigate the influencing factors for the implementation of policies related to the customary rights of the Cibarani people, which also influenced the destruction of Leuweng Titipan Liman Mountain. This study proposed a thought-provoking topic of the influencing factors of policy implementation related to the customary rights of the Cibarani people, which also influenced the destruction of Leuweng Titipan Liman Mountain. In this study, we used indirect impact on implementation theory which consisted of four essential variables for the successful implementation of a policy, namely: 1) communication, 2) resources, 3) disposition, and 4) structure (Prasetyo, 2018). The variables developed within the developed model aided us in examining the factors of inadequate application of policies.

2. Method

This research uses qualitative type and gathered primary data from literature reviews with case studies as the approach method. The qualitative study examines and comprehends the significance of an individual or a group of people concerning a social issue (Creswell, 2019). This qualitative method with a case study approach was selected since it facilitated exploring the protection of the poor in Cibarani *Wewengkon*, which had been regulated in Regional Government Regulation No 8 of the Year 2015 on the recognition, protection and preservation of indigenous people. The analysis results were expected to reveal the influencing factors on the poor policy implementation related to the protection of Cibarani *Wewengkon*

The data, we collected secondary data as our main data. The secondary data have been processed previously and are used as supplementary information (Sugiyono, 2009; Oktaviani et al., 2021). The secondary data were gathered through numerous sources, such as research articles and books relevant to customary rights, along with the documents of regulations for

customary rights protection, mass media reporting the issues in Cibarani *Wewengkon*, and other relevant secondary data sources.

The obtained data were later analyzed using the interactive model. The analysis was carried out using direct, interactive, and sustainable qualitative data analysis to generate reliable and recent data. The first data analysis activity was data reduction, where we sorted the primary data, focused the data, and looked for the data themes and patterns in a secondary manner. Secondly, we presented the data obtained from the data reduction in the form of descriptions, charts, and others. Thirdly, we drew conclusions that were supported by solid proof.

3. Results and Discussion

3.1. Policy on Geographic Supervision and Protection of Cibarani *Wewengkon*

Customary right is defined as a set of rights explicitly attached to the customary right community in the form of authority or power in regulating and managing their land (Samosir, 2013). This right is bestowed due to the indigenous people's eminent reliance on their land, where they attain supplies of immediate needs so that they are encouraged to manage their land in a sustainable means following the local custom principles (Reytar & Veti, 2017). Therefore, the government holds the role of acknowledging and appreciating, along with protecting customary rights, without harming other people (Prasetyo, 2018). Commitment to recognizing, respecting and protecting customary rights is contained in Law Number 11 of 2020 concerning Job Creation, stated explicitly in article 9 paragraph (2).

The agrarian principles become the central reference for the regional government in protecting customary rights. However, the basic regulation on agrarian principal has not provided complete protection for the customary law community. A study reported issues related to indigenous land protection within the basic regulation on agrarian principal, such as the unclear boundaries between the indigenous land and the state land (Prasetyo, 2018; Resmini, 2019), overlapping land status (Abby, 2016; Hadi, 2021) and uncertain legal process in issuing the indigenous land ownership certificate (Lah, 2018; Yanti et al., 2020). This poor protection always positions the indigenous people on the losing side in the management of land and other natural resources (Salim & Ruslan, 2021). Consequently, those problems result in the disappearance of indigenous people's livelihood, as well as the resistance movement demanding legal clarity on their customary rights (Firmansyah, 2021).

The same customary rights issues are also reported in the *Wewengkon* or customary rights of Cibarani, one of the indigenous societies in Lebak Regency, Indonesia. This issue is induced by illegal gold mining activities. Consequently, the indigenous territory in Liman Mountain, regulated based on customary law, is maintained as a reserved area for land and natural resource utilization (Iskandar & Supangkat, 2017). Cibarani *Wewengkon* is one of the indigenous territories protected by the Lebak Regional Government through the Lebak Regency Regulation No 8 of the Year 2015 concerning the recognition, protection, and empowerment of the customary law community. However, illegal gold mining activity aiming to explore the natural resources still occurs in Cibarani Mountain, resulting in the deforestation of two hectares of forest area and leaving two to four meters of excavated area in Liman Mountain (Khoirunnas, 2021).

In addition, the illegal mining activity indicates the inadequate implementation of Lebak Regency Regulation No 8 of the Year 2015 concerning the recognition, protection, and empowerment of the customary law community. When associated with the success variable of policy implementation, it can be seen that problems are a factor in the protection of customary rights in Cibarani that is not optimal. According to Edwards (1980), there are four variables affecting the successful implementation of a policy, namely communication, resources, disposition, and bureaucracy structure. Those variables are intercorrelated so that one unfulfilled variable will lower the policy application, as depicted in Figure 1.

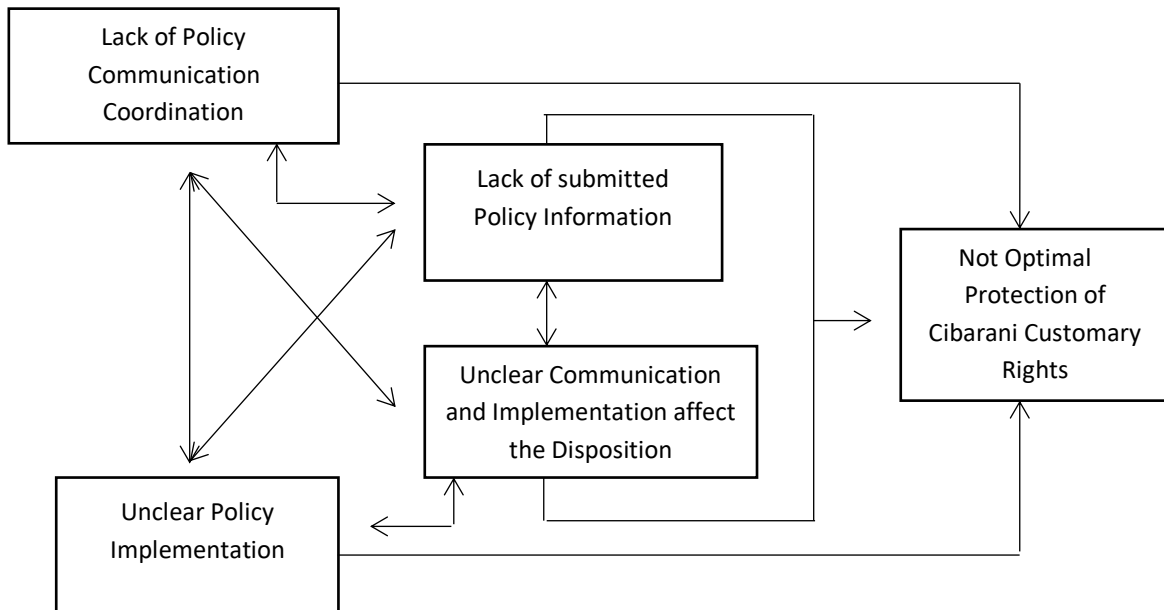


Figure 1. Framework of Policy Implementation

As illustrated in Figure 1, communication is the first influencing variable of policy implementation. Without precise, accurate, and consistent communication, the stakeholder has no clear ideas about what they are about to accomplish (Agustino, 2020). The problem is precisely the lack of communication coordination which should be the authority of the Regional Government of Lebak Regency and the executor of the policy, namely the Lebak Regency Environmental Service. This creating a follow-up impact in the form of minimal information conveyed to the policy technical implementing unit and influencing the disposition of policy implementers. This is a factor in the non-optimal protection of customary rights in Cibarani. Figure 1 also presents the effects of correlation on other variables (Adrian, Purnomo, & Agustiyara, 2020). The primary purpose of communication is to enhance coordination and information dissemination to the stakeholders involved in the policy implementation (Cook & Hunsaker, 2007). The accurate, precise, and consistent transfer of information helps the involved stakeholder to apply the policy based on its purposes.

3.2. Deficient Communication Coordination

Even if its protection has been assured through several regulations, the damages caused by the natural resources exploitation still occur in Liman Mountain, verifying the non-maximum supervision and protection. This can be seen from the damage data, which identified ten holes dug. In addition, it was identified that an area of two hectares of land had been

damaged by illegal gold mining in Mount Liman. As a consequence, the Cibarani indigenous people should face the damages on their *Wewengkon*, or customary rights, as two hectares of forest in Liman Mountain were deforested. As the authorized party, the Lebak Regional Government should be held accountable since they are responsible for the protection and supervision of Cibarani *Wewengkon* (Iqbal, 2021). As declared in the Lebak Regency Regulation No 8 of the Year 2015 concerning the recognition, protection, and empowerment of the customary law community, article 15 paragraph 2, the Lebak Regional Government and the customary law society collaboratively supervise the indigenous territory of the *Wewengkon*.

The natural catastrophe in Liman Mountain indicates the non-optimum implementation of policies related to surveillance and protection. One of the influencing factors for the poor protection of Liman Mountain is the Lebak Regional Government's ignorance of the protection and supervision of the Cibarani *Wewengkon*. Their ignorance is illustrated by their attitudes and behaviors, shove responsibility to the Banten Provincial government. Meanwhile, the Lebak Regional Regulation No 8 of of the Year 2015, article 15, paragraph two clearly describes that the authority for protection and supervision is entirely under the Lebak Regional Government. The Lebak Regional Government's ignorance is provoked by the poor communication between the policy-making stakeholders, such as the Lebak house of representatives and the regent, generating unclear information related to the power of protecting and supervising the customary law.

The Lebak house of representative, and its regent has been unanimously agreed on Regional Regulation No 8 of the Year 2015 concerning the recognition, protection, and empowerment of the customary law community, as presented in Figure 2. Following that communal decision, the regulation should be socialized to the Department of Environment and Forestry of Lebak to ensure the safeguarding and supervision of the Cibarani *Wewengkon*. However, ambiguous information from the policymakers affects the dissemination of the policy's content. Consequently, the Lebak Regional Government presents minimum knowledge of its authority for the protection and supervision of customary rights.

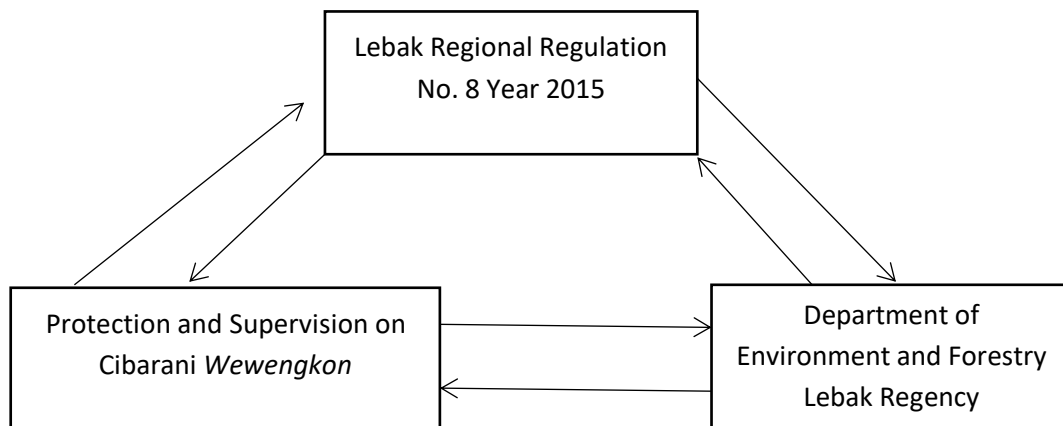


Figure 2. Cycle of Policies Related to Protection for Cibarani Indigenous Territory

The Lebak Regional Government's nescience on their power to preserve and supervise the customary rights impacts their information transfer to the Lebak Department of Environment and Forestry. Information dissemination is crucial as it influences the performance of stakeholders directly implementing the policy. Thus, the Lebak Department of

Environment and Forestry is unable to conduct its authority due to its insufficient knowledge of the policy's content. This poor transfer of information occurs due to a number of factors, such as the obscurity of the policy. Without clear communication, the policy is implemented in a different means from its expected goal (Cook & Hunsaker, 2007).

In addition, the implementation disposition from the relevant stakeholder also impacts the successful application of a policy. The stakeholders are obligated to have sufficient knowledge of the policy, along with the adequate ability to implement the policy. However, obstacles to policy implementation are inevitable, primarily when the executors do not follow the policy's purposes. Linearly, the Lebak Government's ignorance of their authority to protect and supervise Liman Mountain affects the work of other stakeholders, such as the Lebak Department of Environment and Forestry. Thus, the involved department has a minimum understanding of the authority regulated within the policy.

As a consequence, Regional Regulation No 8 of the Year 2015 concerning the preservation of Cibarani *Wewengkon* is implemented properly. Even though the Lebak Regional Government has structured stakeholders, such as the Department of Environment, those stakeholders present minimum comprehension of the policy content. Cook and Hunsaker (2007) explained that the executor requires clear information related to their projects and work. In the absence of clear instruction and understanding, the executor has no knowledge of what they are doing (Hia & Zega, 2021).

Our finding suggested the importance of transparent information dissemination to the executor. Agustino (2020) added that authority disposition occurs due to unclear information and the stakeholder's reluctance to execute the policy. Thus, mere information clarity does not ensure the successful implementation of a policy, primarily if the information provides no clear explanation of the content of the policy.

3.3. Potential of Landslide

The irregular policy implementation may lower the result, as well as endangering public safety. Liman Mountain is a protected forest area and upstream of big rivers in Banten Province, Indonesia. Thus, disruption on Liman Mountain may result in numerous disaster probabilities, such as floods and landslides. The risks of disaster emerge as Liman Mountain is the rainwater absorption area capable of containing high rainwater intensity. The deterioration of the Liman Mountain area leads to its inability to accommodate high rainwater intensity, resulting in high upstream water volume. It induces flash floods in numerous downstream areas. Besides, the protected forest area is a natural soil retaining area capable of reducing the risks of landslides. However, the unlawful mining activities in Liman Mountain potentially result in a landslide that threatens public safety in Cibarani. The significant landslide vulnerability of the region around Liman Mountain is illustrated in Figure 3.

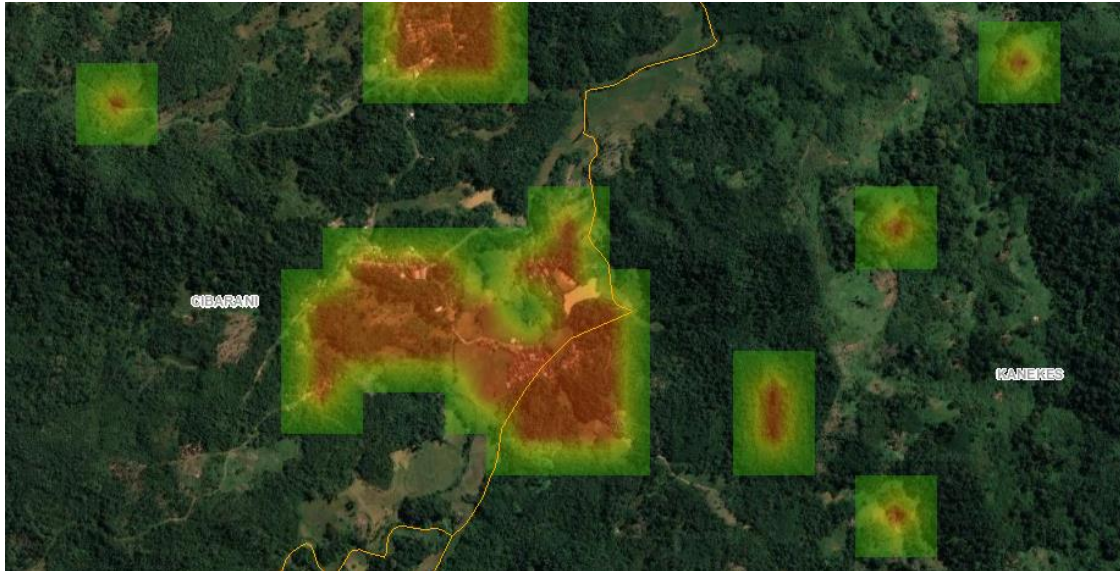


Figure 3. Potential of Landslide in the Cibarani *Wewengkon* Area, Lebak Regency, Banten, Indonesia

Figure 3 illustrates a map taken from the Inarisk through the service layer of landslide susceptibility in Cibarani. As presented in Figure 3, the surrounding areas of Liman Mountain have a high potential for a landslide, as indicated by the red color showing a high risk of mudslide. Meanwhile, the yellow and green colors signify the moderate and low risk of landslide. Consequently, the illegal mining activity in Liman Mountain areas signals the dangers of a landslide that requires immediate concern from the Lebak Regency Government. The Lebak Local Government should take direct action, as well as conduct reforestation of the protected forest area being destroyed during the mining process. These actions are essential as an anticipation measure to mitigate the landslide disaster in the Cibarani area.

4. Conclusion

Our analysis results showed that one of the central influencing factors for the poor protection and supervision in the Cibarani *Wewengkon* is the Lebak Regional Government's ignorance of their authority in supervising and safeguarding the area, as regulated in their Regional Regulation No 8 the Year 2015. Their nescience is illustrated in their attitudes, shoving the protection and supervision responsibility to the Banten Provincial Government. Meanwhile, the Regional Regulation No 8 of the Year 2015, article 15, paragraph two clearly declares that the Lebak Regional Government and the customary law community have to supervise the *Wewengkon* territory collaboratively. Thus, the available regulations have accentuated the authority of the Lebak Government in safeguarding and supervising the Cibarani *Wewengkon*. Further, this finding also signifies the Lebak Regional Government's incomprehension of the policy's content. In fact, the leading member of the Lebak Regional Government, the house of representative and the regent, have been actively involved in the formulation of policies for the Cibarani *Wewengkon* protection and supervision. Their ignorance affects the dissemination of information to the field executors. Consequently, the inability to understand the policy's content results in poor information transmission and poor attitude in conducting their authority based on the policy's purposes.

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