

The Legal Conflict on Registration of Inter-Religious Marriages Before & After SEMA No. 2 of 2023

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Abstract. *Registration of interfaith marriages in Indonesia has become an interesting legal issue to study, especially after the publication of Supreme Court Circular Letter (SEMA) No. 2 of 2023. This SEMA provides confirmation that unregistered interfaith marriages will not be recognized by the state, causing the emergence of legal conflicts related to the legal status of previously executed marriages. This research aims to analyze the differences in the perception of marriage before and after SEMA No. 2 of 2023, as well as legal impacts arising from SEMA provisions A. The research method used is a normative research method with a short form of quantitative action, a short form of legislation draft by analyzing various regulations related to research issues. The research results reveal that although SEMA No. 2 of 2023 does not apply retroactively, couples who were married before the issuance of SEMA will still have their marriage recognized as valid by the state. However, couples who marry after the SEMA has been issued and cannot register their marriage face legal uncertainty, which impacts inheritance rights, the legal status of the marriage, and the protection of children born from the marriage.*

Keywords: *Interfaith; Marriage; Registration.*

1. Introduction

Marriage is a physical and spiritual bond between a man and a woman as a family whose aim is to form a happy home based on the belief in God Almighty¹. The validity of the marriage between the bride and groom as stated in Article 1 is confirmed by Article 2 paragraph 1 of Law no. 1 of 1974 concerning Marriage (hereinafter referred to as the Marriage Law). Article 2 paragraph 1 states that marriage is valid if it is carried out according to the laws of their respective religions and beliefs. Article 2 paragraph 1 explicitly requires that marriage will be valid if it is carried out by couples who have the same religion and beliefs. However, the fact is

¹ Article 1 Law No. 1 of 1974 concerning Marriage.

that some prospective husband and wife couples in Indonesia have different religions and beliefs. Prospective couples of different religions experience obstacles in entering into a legal marriage.

Interfaith marriages are not something new for multicultural Indonesian society. These marriages have occurred in society (in various social dimensions) and have been going on for a long time. However, this does not mean that the issue of interfaith marriage is not problematic, in fact it tends to always generate controversy among society². The facts about cases of interfaith marriages are very diverse, such as those experienced by two Muslim and Christian couples by the Central Jakarta District Court (PN Jakpus) with determination Number 155/Pdt.P/2023/PN.Jkt.Pst. which then reignited the flames of pros and cons among the community. This finally received serious attention from Deputy Chairman of the MPR H. Yandri Susanto, who then urged the Supreme Court (MA) to cancel the decision of the Central Jakarta District Court which granted the request for registration of interfaith marriages³.

The existence of the cases mentioned above is very likely to occur at any time. Even though Article 2 paragraph 1 of the Marriage Law regulates the conditions for the validity of a marriage, as stated in the phrase, the validity of marriages carried out according to the laws of their respective religions and beliefs, cases of interfaith marriages still occur. Interfaith marriages often occur abroad, as the experience of several people shows that interfaith marriages often occur in Australia, America, China, Singapore and England. Couples of different religions try to legalize interfaith marriages by carrying out marriages according to the legal procedures of both partners, as was done by the celebrity couple Mikha Tambayong and Deva Mahendra who married between different religions. The religious differences between the two, considering that Micah is Catholic and Deva is Muslim. The Constitutional Justice discussed that Deva Mahendra and Mikha Tambayong were getting married abroad, one of the bride and groom of the couple who was going to have an interfaith marriage while changing religions to follow their partner's religion. Both couples married 2 (two) times, namely the first marriage followed the religion of the prospective husband and then married again following the teachings of the wife's religion⁴. The application can be the opposite, whether the husband's religion comes first or the wife comes first. Furthermore, one proof of marriage is registered with the local Population and Civil Registry Service with the agreement of both partners. This method is used by interfaith couples to avoid the legal process by submitting an application for permission to carry out an interfaith marriage to the court. The

² Aulil Amri, "Perkawinan Beda Agama Menurut Hukum Positif dan Hukum Islam", Media Syariah, Volume 22, Nomor 1 (2020).

³ M. Reza Sulaiman, Dini Afrianti Efendi, "Mikha Tambayong dan Deva Mahendra Menikah Beda Agama Benarkah Tanda Penyelundupan Hukum?" 22 October 2024 <https://www.suara.com/lifestyle/2023/02/01/163415/mikha-tambayong-dan-deva-mahendra-nikah-beda-agama-benarkah-tanda-penyelundupan-hukum>

⁴ Article 2 Law No. 1 of 1974 concerning Marriage.

problem of interfaith marriages is not only about the implementation of the marriage but also about the registration of the marriage⁵.

One important aspect of marriage validity is marriage registration, which aims to ensure that the marriage is officially recognized and has legal certainty. Marriage registration is as regulated in Article 2 paragraph (2) of the Marriage Law, so each marriage is recorded according to the applicable laws and regulations. Marriage registration can be done through a Court Determination as regulated in Article 35 of the Population Administration Law with an Explanation which means "A marriage determined by a court is a marriage between people of different religions". These two articles emphasize the importance of religiously valid marriages and legal registration of marriages. Various legal efforts have been made by interfaith couples to obtain approval and legal certainty for their marriage. This is done so that the rights and obligations of both parties as husband and wife become clear, as well as other legal issues in the future involving both parties. One legal remedy for interfaith couples is to carry out a Judicial Review of the Marriage Law to the Constitutional Court⁶.

The case of interfaith marriages in Indonesia in the last 5 years is still a complex and controversial issue. Even though the Supreme Court has issued a circular regarding interfaith marriages, there are still many cases that have not been resolved. Judicial review of Constitutional Court decision no. 68/PUU-XII/2014 concerning the regulation of interfaith marriages has also been submitted by applicants who feel disadvantaged by the existence of the Marriage Law in 11 Article 2 paragraph (1). This case has also been decided by the Constitutional Court (MK) and the MK declared its complete rejection of the material review of the Marriage Law proposed by the applicant. The applicant's application was rejected in its entirety by the Constitutional Court because it was considered legally unreasonable. The Constitutional Court actually considers that the state must issue regulations with religious, moral, security and public order values. In fact, in the application for review of the Marriage Law, the Constitutional Court in decision Number 68/PUU-XII/2014⁷ expressly rejected the existence of marriage between individuals of different religions. This can result in legal uncertainty for couples who wish to obtain legal recognition of their marriage.

The case of registering interfaith marriages in Indonesia has become an increasingly important legal issue, especially since the Supreme Court Circular (SEMA) No. 2 of 2023. According to the Supreme Court Spokesperson, Suharto, "the circular letter was addressed to the heads of courts of first instance and appeals, containing instructions for judges in adjudicating cases regarding requests for registration of marriages between people of different religions and beliefs⁸. The aim is to provide certainty and unity in the application of the law in handling

⁵ Article 35 Population Administration Law.

⁶ Decision No. 68/PUU-XII/2014, www.mkri.id

⁷ Miliati Fatma Sari dan Mulyadi Yunanto, "Analisis Putusan Judicial Review Mahkamah Konstitusi No.68/PUU-XII/2014 Atas Pasal 2 Ayat (1) Undang-Undang No.1 Tahun 1974 Terhadap Perkawinan Beda Agama," *Diponegoro Law Journal* 5, no. 3 (2019): 9.

⁸ Article 32 of the Supreme Court Law

these cases. In accordance with Article 32 of the Supreme Court Law, the Supreme Court has the authority to give instructions, warnings or warnings to all courts without reducing the freedom and independence of judges." This SEMA aims to provide guidance for Judges in deciding applications for marriage for couples of different religions and applications for legalization of interfaith marriages conducted abroad or marriages held according to 2 different religions⁹.

With the issuance of SEMA No. 2 of 2023, this becomes an obstacle for interfaith couples to conduct their marriages and register their marriages that have been carried out before the SEMA but have not been registered. This study will discuss the registration of marriages before and after SEMA No. 2 of 2023 and the consequences of the law on interfaith marriages that cannot be registered after the stipulation of SEMA No. 2 of 2023.

2. Research Methods

This research uses normative research. "Normative legal research method that uses research methods on statutory regulations both from the perspective of the hierarchy of statutory regulations (vertical) and the harmonious relationship of legislation (horizontal)." This research will examine the legal certainty provided by SEMA decision no. 2 of 2023. The type of research used in this writing is normative legal research because it examines legal principles, apart from that, this research also examines and examines written regulations. In this research, the data source was obtained from secondary data originating from journals, books, articles, the internet and other sources related to interfaith marriages. This data source contains concepts, principles, doctrines as legal sources to answer legal issues in solving a problem from a civil law perspective¹⁰.

The legal materials used are primary legal materials. Primary legal materials are considered authoritative¹¹ sources because they directly establish rights, obligations and binding rules. Like Law no. 1 of 1974 concerning Marriage, Law no. 24 of 2013 concerning Amendments to Law No. 23 of 2006 concerning Population Administration, and SEMA No. 2 of 2023. The data analysis method used in this research is legal analysis related to legal conflicts regarding the registration of interfaith marriages before and after SEMA No. 2 of 2023, using library research data collection techniques¹².

⁹ Susana Rita Kumalasanti, "MA Larang Pengadilan Lakukan penetapan Perkawinan Beda Agama", 22 October 2024 <https://www.kompas.id/baca/polhuk/2023/07/19/ma-pengadilan-dilarang-lakukan-penetapan-perkawinan-beda-agama>

¹⁰ Peter Mahmud Marzuki, (2008). *Pengantar Ilmu Hukum*. Jakarta: Kencana. p. 23.

¹¹ Soerjono Soekanto, 1986, *Pengantar Penelitian Hukum*, UI-Press, Jakarta, p.15.

¹² I Made Pasek Diantha. 2016. *Metodologi Penelitian Hukum Normatif dalam Justifikasi Teori Hukum*, Prenada Media, p. 143.

3. Results and Discussion

3.1. Registration of Interfaith Marriages Before and After SEMA No. 2 of 2023

Marriage is the living together of a man and a woman who fulfill certain conditions. One of the requirements for marriage is that the marriage must be valid and the marriage must be registered according to the laws in force in that country¹³. In accordance with Article 2 paragraph 2 of the Marriage Law which states "Every marriage must be recorded in accordance with applicable laws and regulations by the authorized institution". Marriage registration aims to provide legal certainty in obtaining a marriage certificate as well as rights and obligations such as inheritance rights, rights to joint property, obligations to care for the family, and rights in the distribution of assets in the event of divorce. Based on Article 35 letter a of the Population Administration Law, marriage registration can be carried out at implementing agencies that carry out marriage registration such as the local Religious Affairs Office or the Civil Registry Office. The function and benefit of marriage registration is to provide authentic evidence if problems occur in the marriage, for example determining the status of children born in the marriage between the couple and if there is a divorce, the marriage certificate is used as evidence and a tool in resolving it. According to the provisions of the Marriage Law, marriages that are not in accordance with the laws of religion and belief, apart from not being registered with state administration institutions, are also prohibited from carrying out marriages.

One of the cases of interfaith marriages carried out before the issuance of SEMA No.2 of 2023 occurred in Central Jakarta, namely between a Muslim and Christian couple who submitted an application to legalize the registration of their marriage at the Central Jakarta District Court (PN Jakpus) with determination Number 155/Pdt. P/2023/PN.Jkt.Pst which granted the request to register interfaith marriages at the Central Jakarta City Population and Civil Registration Sub-Department Office based on "Law No. 39 of 1999 concerning Human Rights (HAM), Article 10 paragraph (1) states that every person has the right to form a family and continue their offspring through legal marriage and of free will; "Considering that interfaith marriages are not strictly regulated in Law No. 1 of 1974 concerning Marriage, however, this situation is a reality that occurs in society and is a social need for which a solution must be found according to law so as not to cause negative impact on social and religious life." So on this basis it was granted by the Central Jakarta District Court Judge for the sake of realizing the legal principles, namely justice, certainty and expediency¹⁴.

Marriage registration in Central Jakarta District Court Decision Number 155/Pdt.P/2023/PN.Jkt.Pst was carried out before the issuance of SEMA No. 2 of 2023 by the Supreme Court, Decision of the Central Jakarta District Court, it is known that Petitioner I, who is Christian, and Petitioner II, who is Muslim, that the registration of interfaith marriages is

¹³ Wirjono Prodjodikoro, 1981, *Hukum Perkawinan di Indonesia*, Bandung: Sumur, hlm. 7-8.

¹⁴ M. Yahya Harahap, 1975, *Pembahasan Hukum Perkawinan*, CH.Zahir Trading Co, Jakarta, Hal 25

carried out based on Article 35a of the Population Administration Law, which allows the registration of interfaith marriages¹⁵, has obtained a stipulation from court, this article indirectly provides an opportunity for interfaith couples who wish to marry to register their marriage, after obtaining permission from the court, thereby providing recognition of the legality of the marriage. However, recently, after the issuance of SEMA No. 2 of 2023, the judges relatively easily annulled the Marriage Law, which should be the legal basis governing marriage in Indonesia and applies generally to all citizens.

Even though the Constitutional Court has twice rejected requests to review Article 2 paragraph 1 of the Marriage Law, there are still parties who are dissatisfied and try to find loopholes by referring to decisions based on the Population Control Law or the Population Administration Law. However, interfaith marriages are basically inconsistent and are not legally permitted according to Indonesian law because they violate the Marriage Law in Indonesia, this is written in Article 2 paragraph 1 "Marriage is valid if it is carried out according to the laws of each religion and belief". Basically every religion in Indonesia is: Islam; Christian; Catholic; Hindu; Confucianism; and Buddha, does not want marriages between people of different religions.

This is what made the Chief Justice of the Supreme Court (MA), M. Syarifuddin issue SEMA. Due to the legal uncertainty surrounding interfaith marriages, the Supreme Court (MA) responded by issuing Supreme Court Circular Letter (SEMA) No.2 of 2023 which was issued on July 17 2023 by the Chief Justice of the Supreme Court. The purpose of issuing SEMA is to provide legal certainty and guidance for judges in adjudicating applications for registration of marriages between people of different religions and beliefs. With the issuance of SEMA, judges must be guided by the provisions in SEMA which contain "1) A valid marriage is a marriage carried out according to the laws of each religion and belief, in accordance with Article 2 paragraph (1) and Article 8 letter f of the Law No. 1 of 1974 concerning Marriage; 2) The court did not grant the request to register marriages between people of different religions and beliefs."¹⁶

In accordance with the contents of SEMA No. 2 of 2023 provides clear directions and guidelines for judges to process cases of interfaith marriages which as an application of the philosophical basis, marriage is valid if it is carried out according to one's religion and beliefs. In accordance with SEMA No. 2 of 2023 and the Marriage Law Article 2 paragraph 1 and paragraph 2 and Article 8f of the Marriage Law which confirms that "a marriage is valid if it has been carried out in accordance with the laws of each religion and belief", thus the validity of the marriage must be followed by religious norms and also applicable legal provisions. The Supreme Court Supervisory Body has the right to issue warnings or warnings, in accordance with the provisions of the Supreme Court of the Republic of Indonesia and/or the Judicial

¹⁵ Annisa, "Pernikahan Beda Agama Di Indonesia Ditinjau Dari Perspektif Hak Asasi Manusia", (Fakultas Hukum, Jurusan Ilmu Hukum Universitas 17 August 1945 Samarinda. Indonesia: Vol.2, No.1, 2021), 12

¹⁶ Mardalena Hanifah, "Perkawinan Beda Agama Ditinjau Dari Undang-Undang Nomor 1 Tahun 1974 Tentang Perkawinan," Sumatera Law Review 2, no. 2 (2019): 360



Commission of the Republic of Indonesia. In this SEMA, the court is asked to provide fair and non-discriminatory considerations when assessing applications for interfaith marriages¹⁷.

Marriage registration after the issuance of SEMA No.2 of 2023, interfaith marriages can no longer be said to be valid because according to the provisions of SEMA and Article 2 paragraph 1 of the Marriage Law, they must be of the same faith to obtain clear legal recognition and legal status. Several weeks after the issuance of the SEMA, the North Jakarta District Court (PN Jakut) granted the request for registration of interfaith marriages in decision Number 423/Pdt.P/2023/PN.Jkt.Utr, a decision issued after the SEMA decision by the single judge of the North Jakarta District Court, Yuli Effendi. on August 8 2023 and granted marriage according to the Catholic religion. In this determination, Petitioner I, who is Catholic, and Petitioner II, who is Protestant Christian, the couple married in the Catholic religion. Referring to Article 2 paragraph 1 of the Marriage Law and SEMA no. 2 of 2023 the marriage is invalid, because it is an interfaith marriage. So, it cannot be listed in accordance with the publication of SEMA No. 2 of 2023. It is also stated that Article 5 of the Islamic Code states: "(1) All marriages must be registered to be in accordance with the Islamic community. (2) Marriage registration according to paragraph (1) is carried out by Civil Registry Office officers in accordance with Law No. 22 of 1946 jo. Law No. 32 of 1954."

Based on Article 8 of Law No. 12 of 2011 concerning the Formation of Legislative Regulations, SEMA is recognized for its existence and has binding legal force even though SEMA is not a legal product in the regulatory hierarchy as stated in Article 7 paragraph (1). SEMA No.2 of 2023 provides improvements and confirmation of existing legal provisions, after the issuance of SEMA, marriages between interfaith couples who do not register and register their marriage cannot obtain a marriage certificate and the rights related to marriage, such as child custody, rights inheritance, and so on. SEMA Determination No. 2 of 2023 also describes efforts to clarify and tighten marriage regulations in Indonesia. This can be seen as a step to reduce the potential for abuse of unregistered marriage regulations and strengthen the application of applicable laws¹⁸.

3.2. Legal Consequences of Interfaith Marriages That Cannot Be Registered After the Determination of SEMA No. 2 of 2023

Prior to the issuance of SEMA No. 2 of 2023 there are a number of legal considerations that allow the registration of interfaith marriages. One of them is that there is room for interpretation in the legal system which allows interfaith couples to submit a request for dispensation to the court¹⁹. For example, based on several court decisions, several interfaith

¹⁷ Soerjono Soekanto, 2012, *Intisari Hukum Keluarga*, PT Citra Aditya Bakti Bandung, p.5

¹⁸ Bintang Ulya Kharisma, "Surat Edaran Mahkamah Agung (SEMA) Nomor 2 Tahun 2023: Akhir Dari Polemik Perkawinan Beda Agama?," *Journal of Scientech Research and Development* 5, no. 1 (2023)

¹⁹ Andi Saputra, "PN Jakut Izinkan Nikah Beda Agama Pasca-SEMA, Ini Sikap MA," *detiknews*, 15 November 2024, <https://news.detik.com/berita/d-6902148/pn-jakut-izinkan-nikah-beda-agama-pasca-sema-ini-sikap-ma>.

couples who have carried out a marriage in accordance with their respective beliefs, can apply to have their marriage registered in the civil registry even though they do not meet the requirements of the same religion. Interfaith marriages that occurred before the issuance of SEMA No. 2 of 2023, several civil registration offices accept interfaith marriages based on considerations of humanity and social justice, for the reason of providing legal protection for partners and children born from these marriages. This especially applies to couples who have a strong emotional bond who have married abroad, and still want to be recognized as legally valid in Indonesia. However, the registration of interfaith marriages previously was still very limited, depending on the policies of each court or relevant agency, and often gave rise to legal uncertainty, and this often gave rise to legal uncertainty due to confusing news regarding the registration of interfaith marriages. Even so, some Disdukcapil are reluctant to register interfaith marriages because they clearly violate the Marriage Law²⁰.

With the publication of SEMA No. 2 of 2023, legal consequences emerge which state that marriages between individuals with different religions and beliefs cannot be registered administratively in the population system, even though the marriage is valid according to their respective religions and beliefs. Supreme Court Circular (SEMA) No. 2 of 2023 was issued in response to the increasing number of cases of interfaith marriages that were not registered in state administration and emphasized that marriages that were not registered under Indonesian positive law would not be recognized in state administration. Interfaith marriages that cannot be registered result in several factors, one of which has implications for population status, marital property, inheritance rights and the status of children resulting from the marriage as well as the right to guarantee health. Apart from that, it will also have implications for taxes on the acquisition of assets and income. This will give rise to social problems and legal uncertainty²¹.

In Article 6 of the Compilation of Islamic Law (KHI) it is explained that "(1) To comply with the provisions in article 5, every marriage must be carried out in the presence and under the supervision of a Marriage Registrar Officer. (2) Marriages performed outside the supervision of Marriage Registrar Employees have no legal force." This means that if one party fails to fulfill their obligation to register the marriage, neither party can bring the case to court, even regarding child support or the division of joint assets acquired during the marriage. In addition, even if one of the parties dies, the assets cannot be inherited by the husband or wife.

The legal consequences of invalid marriage cover various aspects, ranging from the legal status of an invalid marriage, inheritance and family rights issues, to the social and psychological effects on partners and their children. The consequences of not registering a marriage can lead to legal problems during the marriage, including: 1) The woman is not recognized as a legal

²⁰ Diah Marla Pitaloka, Benny Djaja, and Maman Sudirman, "Larangan Perkawinan Beda Agama Menurut Mahkamah Agung Dalam SEMA Nomor 2 Tahun 2023," *Yustitia* 18, no. 1 (2024)

²¹ Lu Sudirman dan Jendy Herlinda Karwur, "Perlindungan Hukum Bagi Pasangan Yang Melakukan Perkawinan Beda Agama Di Indonesia," *Journal of Judicial Review* 16, no. 2 (2019): 139.

wife; 2) A wife does not have the right to receive maintenance or inheritance from her deceased husband; 3) A wife does not have the right to joint property acquired during the marriage in the event of a divorce, because according to the law, the marriage is considered non-existent; 4) Children born from this marriage are considered not legitimate, so the child only has a legal relationship with the mother and the mother's family.

According to Article 2 paragraph (1) of Law No. 1 of 1974 concerning Marriage, a marriage is only recognized if it is carried out in accordance with applicable legal provisions, which include official registration. If the marriage is not registered, the married couple will not receive a valid marriage certificate, which is what makes the couple unable to obtain legal status for inheritance rights and child custody rights. In Article 7 paragraph (1) of the Compilation of Islamic Law (KHI)²², marriage can only be proven through marriage registration and a marriage certificate issued by a marriage registration officer. Because without official registration, a married couple who are married of different religions cannot legally inherit property from their partner. The consequences of an unregistered marriage also affect children. Children born from an unregistered marriage face the risk of losing their legal status. They may have difficulty obtaining a birth certificate, which impacts their access to education and public services. In addition, children's inheritance rights may also be threatened, given the unrecognized legal status of their parents²³.

This is in line with the provisions in Article 42 of Law No. 1 of 1974 concerning Marriage which states "A legitimate child is a child born in or as a result of a legitimate marriage." Which states that children born from a legitimate marriage have the right to legal recognition and protection. Spouses and their children are at risk of losing these rights. In addition, the inability to register a marriage can create a legal gap, where couples cannot live a family life with a clear legal status. SEMA No. 2 of 2023 has a significant impact on unregistered interfaith marriages in Indonesia. However, SEMA No. 2 of 2023 does not apply to couples who were married before the issuance of the circular. This means that interfaith couples who have been married and legally registered before SEMA No. 2 of 2023 are still recognized. Thus, although SEMA No. 2 of 2023 prohibits the registration of interfaith marriages, couples who were married before the issuance of this SEMA still have a valid legal status for their marriage.

4. Conclusion

Registration of marriages after the issuance of SEMA No. 2 of 2023, interfaith marriages can no longer be said to be valid because according to the provisions of SEMA and Article 2 paragraph 1 of the Marriage Law, they must be of the same faith to obtain clear legal recognition and valid status. Before SEMA No. 2 of 2023 was issued, registration of interfaith marriages was still possible, although with limited procedures and depending on the policies of each agency.

²²Fransiska Roman, *Kontroversi SEMA No. 2 Tahun 2023*, 15 November 2024
<https://indonesiasatu.co/detail/kontroversi-sema-nomor-2-tahun-2023>

²³ Liky Faizal, "Akibat Hukum Pencatatan Perkawinan," *ASAS: Jurnal Hukum Ekonomi Syariah* 8, no. 2 (2019): 65.

However, after SEMA No. 2 of 2023 was issued, registration of interfaith marriages was no longer permitted, which caused legal uncertainty for couples who were unable to register their marriages. However, this SEMA is not retroactive, so that marriages that were registered before SEMA was issued are still recognized as valid and are not affected by the new provisions. By not registering a marriage, they will face legal uncertainty regarding their marital status. This has an impact on various legal aspects, such as inheritance rights, rights to joint property, and recognition of children born from the marriage. In addition, unregistered couples are also at risk of not getting adequate legal protection. SEMA No. 2 of 2023 has a significant impact on unregistered interfaith marriages in Indonesia.

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