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The Problem Of The Neutrality Of The Constitutional Court In Upholding The Constitution In Indonesia

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Abstract

The Constitutional Court holds a crucial position as the guardian of the constitution, tasked with ensuring that every action of state administrators remains in accordance with the 1945 Constitution of the Republic of Indonesia. In exercising its authority, the Constitutional Court is required to be neutral, independent, and free from the influence of political interests or certain parties. However, in practice, various issues still arise that raise public doubts about the institution's neutrality, which can affect public trust and the effectiveness of constitutional

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enforcement. This study aims to analyze the problematic aspects of the Constitutional Court's neutrality in constitutional enforcement in Indonesia and to examine the application of the principle of neutrality in every exercise of its authority. The study uses a normative juridical method with a statutory regulatory approach and literature review. The results show that the neutrality of the Constitutional Court is an important factor in maintaining legal certainty, justice, and the legitimacy of decisions. Therefore, strengthening the integrity of constitutional judges, implementing a code of ethics, and establishing an effective oversight mechanism are necessary to ensure the Constitutional Court remains trusted as an independent and just guardian of the constitution.

Keywords: Independence; Justice; Constitutional Court; Neutrality; Constitutional Enforcement

INTRODUCTION

The Constitutional Court (MK) is a state institution that exercises judicial power based on the 1945 Constitution of the Republic of Indonesia. As the guardian of the constitution, the Constitutional Court has the authority to test laws against the 1945 Constitution, resolve disputes over the authority of state institutions, decide on the dissolution of political parties, resolve disputes over general election results, and issue decisions on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President (Rasji et al., 2024). This authority places the Constitutional Court as an institution that plays a vital role in maintaining the supremacy of the constitution, protecting the constitutional rights of citizens, and ensuring that the administration of the state runs in accordance with the principles of the rule of law.

In exercising its authority, the Constitutional Court is required to uphold the principle of neutrality. Neutrality requires constitutional judges to decide cases based on the law, trial facts, and constitutional values, without being influenced by political or personal interests (Triyudiana et al., 2023). This principle is a crucial component of judicial independence and serves as the basis for delivering fair, objective, and legitimate decisions in the eyes of the public.

However, the issue of the Constitutional Court's neutrality came to public attention following the issuance of Constitutional Court Decision Number 90/PUU-XXI/2023 concerning the age requirements for presidential and vice-presidential candidates. This decision raised allegations of a conflict of interest, which then led to a ruling by the Constitutional Court's

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Honorary Council declaring the then Chief Justice of the Constitutional Court to have violated the code of ethics (Anugrah & Pandu, 2026; Dwi et al., 2025). This incident led to a decline in public trust in the Constitutional Court and gave rise to the perception that the decisions of the constitutional court could be influenced by certain interests.

Normatively, the Constitutional Court Law and the Constitutional Court Code of Ethics require every judge to maintain independence, integrity, and impartiality in examining and deciding cases (Alfret, 2024). However, practice still reveals various issues, such as alleged conflicts of interest, the appointment of judges linked to political interests, and controversial decisions. These conditions indicate a gap between normative regulations and their implementation, potentially undermining the legitimacy of the Constitutional Court and the effectiveness of constitutional enforcement (Firman et al., 2024).

Previous research by Triyudiana et al. (2023) discussed the neutrality of judges in the face of political intervention and the importance of implementing a code of ethics to maintain the independence of the judiciary. However, this research did not specifically examine how the problematic neutrality of the Constitutional Court affects constitutional enforcement in Indonesia and how the principle of neutrality is applied in the exercise of the Constitutional Court's authority. Therefore, this study aims to analyze the influence of the problematic neutrality of the Constitutional Court on constitutional enforcement in Indonesia and examine the application of the principle of neutrality in the exercise of the Constitutional Court's authority.

The urgency of this research is even stronger considering that Indonesia is a state of law as affirmed in Article 1 paragraph (3) of the 1945 Constitution of the Republic of Indonesia. The Constitutional Court's final and binding decisions require every decision-making process to be carried out independently, objectively, and free from intervention (Putra, 2022). Amidst increasingly complex political and constitutional dynamics, strengthening the neutrality of the Constitutional Court is an important factor in maintaining constitutional supremacy, increasing public trust, and realizing a constitutional justice system with integrity and accountability (Walangitan, 2025).

RESEARCH METHODS

This research uses a normative juridical research method, namely legal research conducted by examining legal norms through library materials or secondary data. This approach is used to analyze laws and regulations, legal principles, doctrines, court decisions, and various

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literature related to the neutrality of the Constitutional Court in upholding the constitution in Indonesia. Normative legal research aims to examine law as a norm so as to be able to provide legal arguments to the problems studied. The approaches used in this research include a statutory approach (statute approach) and a conceptual approach (conceptual approach). The statutory approach is carried out by examining various provisions related to the Constitutional Court, such as the 1945 Constitution of the Republic of Indonesia, Law Number 24 of 2003 concerning the Constitutional Court as last amended by Law Number 7 of 2020, and other regulations related to the code of ethics and independence of constitutional judges. Meanwhile, the conceptual approach is used to examine the concepts of neutrality, independence, impartiality, and constitutional enforcement based on the theories and opinions of legal experts.

The legal sources used consist of primary legal materials, secondary legal materials, and tertiary legal materials. Primary legal materials include the 1945 Constitution of the Republic of Indonesia, the Law on the Constitutional Court, Constitutional Court decisions related to the research object, and other laws and regulations. Secondary legal materials include law books, scientific articles, accredited national journals, previous research results, and expert opinions relevant to the research. Tertiary legal materials include legal dictionaries, encyclopedias, and other supporting sources used to clarify the legal terms and concepts discussed. The legal material collection technique is carried out through library research by examining various laws and regulations, Constitutional Court decisions, books, scientific journals, and other legal documents related to the research. Through this analysis, it is hoped that comprehensive conclusions can be obtained regarding the problems of the neutrality of the Constitutional Court and the application of the principle of neutrality in upholding the constitution in Indonesia.

A. RESULTS AND DISCUSSION

The Problem of the Constitutional Court's Neutrality Can Influence the Enforcement of the Constitution in Indonesia

1. The Position and Role of the Constitutional Court in the Indonesian Constitutional System

The Constitutional Court (MK) is a state institution that has an important position in the Indonesian state system as the implementer of judicial power based on the 1945 Constitution of the Republic of Indonesia. The establishment of the MK is part of strengthening the principle of the rule of law (rechtsstaat) which aims to guarantee the supremacy of the constitution in state administration. The position of the MK is regulated in Article 24

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paragraph (2) of the 1945 Constitution which places it on an equal footing with the Supreme Court, but with special authority in the constitutional field (Rahmadani & Oktapani, 2025; Wulandari et al., 2023).

Based on Article 24C of the 1945 Constitution, the Constitutional Court has the authority to test laws against the 1945 Constitution, resolve disputes over the authority of state institutions, decide on the dissolution of political parties, resolve disputes over general election results, and issue decisions on the opinion of the House of Representatives regarding alleged violations by the President and/or Vice President (Nuridahwati, 2020). This authority positions the Constitutional Court as the guardian of the constitution, tasked with maintaining the supremacy of the constitution, primarily through the judicial review mechanism for laws that conflict with the 1945 Constitution (Mungawanah et al., 2025).

In addition to upholding the constitution, the Constitutional Court also plays a role in strengthening democracy and protecting citizens' constitutional rights by resolving election disputes and reviewing laws and regulations. Therefore, every Constitutional Court decision has a far-reaching impact on the development of the legal system and democratic life in Indonesia. This extensive authority requires the Constitutional Court to consistently uphold the principles of independence, professionalism, and neutrality, ensuring that every decision is based on the constitution and the law, rather than on political interests or the interests of certain parties (Anggreni et al., 2024).

2. The Principle of Independence and Neutrality of Constitutional Judges in Upholding the Constitution

Independence and neutrality are fundamental principles in the exercise of judicial power, including in the Constitutional Court (MK). As an institution that guards the constitution, the MK is required to produce decisions that are not only in accordance with the law, but also born through an objective process, free from intervention, and based on constitutional values (Tarigan, 2024). The guarantee of this independence is affirmed in Article 24 paragraph (1) of the 1945 Constitution, which states that the judicial power is an independent power to uphold law and justice. However, independence must still be accompanied by accountability, so that every judge's decision can be legally, ethically, and academically accounted for (Rachmadika et al., 2024).

In addition to independence, constitutional judges are also required to uphold the principle of neutrality, namely not taking sides with political or personal interests in examining

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and deciding cases. This is crucial because many cases handled by the Constitutional Court relate to political issues, such as judicial review, election disputes, and disputes over the authority of state institutions. As constitutional interpreters, constitutional judges must base every interpretation of the constitution on the principles of constitutionalism, protection of citizens' rights, and legal interests, rather than on political pressure or specific interests (Salsabila et al., 2024; Kamaludin & Wardana, 2025).

In practice, the implementation of independence and neutrality faces various challenges, particularly because the mechanism for appointing constitutional judges involves the President, the House of Representatives, and the Supreme Court, potentially giving rise to the perception of a conflict of interest. Therefore, the implementation of a code of ethics and guidelines for constitutional judges is a crucial instrument for maintaining integrity, impartiality, and public trust in the Constitutional Court. Therefore, independence and neutrality are key prerequisites for the Constitutional Court to carry out its function as a guardian of the constitution and produce legitimate decisions that support the enforcement of the constitution in Indonesia (Triyudiana et al., 2022).

3. Problematic Forms of the Constitutional Court's Neutrality

The Constitutional Court (MK) is the guardian of the constitution and the final interpreter of the constitution, playing a role in upholding its supremacy as the basis for state governance. Given that the constitution is the primary foundation of the state system, constitutional judges are required to maintain independence and neutrality so that every decision is truly based on constitutional law and values, rather than political or personal interests (Triyudiana et al., 2022).

In practice, several issues affect the Constitutional Court's neutrality. First, the politicization of the recruitment and appointment process for constitutional judges. The mechanism for filling positions involving the President, the House of Representatives, and the Supreme Court has the potential to create political ties that could affect the judges' independence in deciding cases (Asshiddiqie, 2017; Yusrizal, 2018).

Second, violations of the code of ethics and conflicts of interest. This problem is evident when constitutional judges handle cases related to personal interests, family interests, or political affiliations, raising doubts about the objectivity of their decisions. This situation has the potential to undermine the legitimacy of the Constitutional Court as a guardian of the constitution (Isra, 2010).

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Third, violations of integrity that have criminal implications, such as the bribery case involving a constitutional judge. This incident demonstrates that weak oversight of judicial ethics and integrity can open up space for judicial corruption, ultimately eroding public trust in the Constitutional Court (Laksono, 2019; Bisariyadi, 2015).

Overall, the challenges of the Constitutional Court's neutrality are influenced by both internal and external factors, such as the integrity of judges, recruitment mechanisms, institutional design, political dynamics, and the effectiveness of the oversight system. Therefore, strengthening transparency, accountability, and enforcing the code of ethics are crucial steps to maintain the Constitutional Court's independence and strengthen constitutional enforcement in Indonesia.

4. **The Impact of the Constitutional Court's Neutrality Problem on the Enforcement of the Constitution**

The issue of the Constitutional Court's (MK) neutrality has a direct impact on constitutional enforcement in Indonesia. Controversies, such as MK Decision No. 90/PUU-XXI/2023, have eroded public trust by raising perceptions of conflicts of interest and diminishing the independence of constitutional judges (Yuliana et al., 2024). Furthermore, the judicial recruitment mechanism, which involves the President, the House of Representatives, and the Supreme Court, is considered open to political intervention, potentially affecting judges' objectivity in exercising their authority (Triyudiana et al., 2023; Wantu et al., 2021).

The decline in neutrality also undermines the legitimacy of Constitutional Court decisions, even though they are legally final and binding. Decisions perceived to be influenced by political interests can reduce legal certainty and hinder the protection of citizens' constitutional rights. Therefore, strengthening the independence, integrity, and enforcement of the code of ethics of constitutional judges is a crucial step to maintain constitutional supremacy, increase public trust, and achieve effective constitutional enforcement in Indonesia (Sulastri & Sanmas, 2025; Kurniawan & Ramadhani, 2025; Huda, 2021).

Implementation of the Principle of Neutrality by the Constitutional Court in Upholding the Constitution in Indonesia

1. **Understanding the Principle of Neutrality in Judicial Power**

The principle of neutrality in judicial power requires every judge to carry out his duties independently, objectively, and impartially, so that every decision is based on the law, trial

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facts, and a sense of justice without being influenced by political interests or personal interests. This principle is part of the independence of judicial power as guaranteed in Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia (UUD NRI 1945, 1945).

In the Constitutional Court, neutrality is a crucial principle because constitutional judges serve as the guardians of the constitution and the final interpreters of the constitution. Although nominated by the President, the House of Representatives, and the Supreme Court, constitutional judges are required to maintain independence, impartiality, and integrity so that every decision is truly based on the constitution, not political interests or specific parties (Triyudiana et al., 2023).

2. Constitutional Basis of the Principle of Neutrality of Constitutional Judges

The principle of neutrality of constitutional judges has a legal basis in the 1945 Constitution of the Republic of Indonesia. Article 1 paragraph (3) emphasizes that Indonesia is a state of law, so that all implementation of power, including judicial power, must be carried out based on law. Therefore, the independence and neutrality of judges are important requirements to guarantee the supremacy of law and the protection of citizens' constitutional rights (1945 Constitution of the Republic of Indonesia, Article 1 paragraph (3); Triyudiana et al., 2023).

Furthermore, Article 24 paragraph (1) of the 1945 Constitution of the Republic of Indonesia emphasizes that the judicial power is an independent power to uphold law and justice. However, this independence must be carried out responsibly by adhering to the constitution, laws and regulations, and the code of ethics for judges (1945 Constitution of the Republic of Indonesia, Article 24 paragraph (1); Susanto, 2013).

In addition, Article 24C of the 1945 Constitution of the Republic of Indonesia grants the Constitutional Court the authority to review laws, resolve disputes over the authority of state institutions, decide on the dissolution of political parties, resolve disputes over election results, and issue decisions on alleged violations by the President and/or Vice President. This broad authority requires every constitutional judge to maintain integrity, independence, and neutrality so that the Constitutional Court's decisions have legitimacy and are able to maintain public trust in the enforcement of the constitution (1945 Constitution of the Republic of Indonesia, Article 24C).

3. Regulation of the Principle of Neutrality in the Constitutional Court Law

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The principle of neutrality of constitutional judges is stipulated in Law Number 24 of 2003 concerning the Constitutional Court as the basis for the Constitutional Court's administration. This law regulates the position, authority, requirements, and appointment mechanism for constitutional judges to ensure the institution's independence in carrying out its function as the guardian of the constitution (Rasji et al., 2024).

Strengthening the principle of neutrality is also realized through the implementation of a code of ethics and oversight mechanisms by the Constitutional Court's Honorary Council (MKMK). Constitutional judges are required to uphold independence, impartiality, integrity, and professionalism in carrying out their duties. The MKMK's existence serves to safeguard the honor of judges while strengthening public trust in the Constitutional Court as a constitutional judicial institution (Rasji et al., 2024).

4. **Code of Ethics and Guidelines for the Conduct of Constitutional Judges (Sapta Karsa Hutama)**

The Sapta Karsa Hutama Code of Ethics and Guidelines for the Conduct of Constitutional Judges are ethical guidelines that govern the implementation of constitutional judges' duties to maintain the honor, integrity, and independence of the Constitutional Court. These guidelines contain seven main principles: independence, impartiality, integrity, propriety and courtesy, equality, competence and fairness, and discretion as standards of conduct for judges in exercising their authority (Constitutional Court Regulation Number 09/PMK/2006).

In addition to serving as a code of conduct, the Sapta Karsa Hutama serves to strengthen constitutional ethics and increase public trust in the Constitutional Court. Consistent application of the code of ethics, coupled with effective enforcement mechanisms, is a crucial factor in maintaining the Constitutional Court's legitimacy as the guardian of the constitution and ensuring that every decision remains based on law, the constitution, and the values of justice (Bramasta et al., 2025).

5. **Implementation of Neutrality in Judicial Review**

The application of the principle of neutrality in judicial review laws is a primary requirement for the Constitutional Court to carry out its function as the guardian of the constitution. In exercising its authority under Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia, constitutional judges are required to base their decisions on the constitution, law, and trial facts without being influenced by political interests or pressure from other parties. Thus, the Constitutional Court's decisions can

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guarantee constitutional supremacy, legal certainty, and the protection of citizens' constitutional rights (Wada et al., 2023).

Neutrality is also closely related to the independence of judges and public trust in the Constitutional Court. Therefore, every case examination process must be conducted objectively, impartially, and free from interference so that the resulting decision reflects the principles of fair trial and strengthens a democratic state based on the rule of law (Silalahi & Tobing, 2025/2026).

6. Implementation of neutrality in resolving election result disputes

Applying the principle of neutrality in resolving election disputes is a key requirement to ensure fair, objective decisions free from political interference. The Constitutional Court must base every decision on evidence, trial facts, and legal provisions to maintain the legitimacy of election results and increase public trust in the democratic process (Sintara, 2025).

Furthermore, neutrality is also supported by the role of the Election Supervisory Agency (Bawaslu) in monitoring election violations and maintaining the neutrality of State Civil Apparatus (ASN). Effective oversight, consistent law enforcement, and interagency coordination are crucial factors in ensuring that election dispute resolution is objective, transparent, and in accordance with the principles of a democratic state based on the rule of law (Afrihadi et al., 2025).

7. Implementation of neutrality in disputes over the authority of state institutions.

The application of the principle of neutrality in resolving disputes over the authority of state institutions is an important requirement to guarantee the independence of the Constitutional Court in exercising its authority based on Article 24C paragraph (1) of the 1945 Constitution of the Republic of Indonesia. Constitutional judges must decide cases objectively, impartially and based on the constitution without being influenced by political interests or the proposing institution, so that the function of the Constitutional Court as the guardian of the constitution and implementer of the checks and balances mechanism can be carried out optimally.

The implementation of neutrality is also supported by the constitutional justices' code of ethics, which emphasizes integrity, independence, and professionalism. Therefore, every dispute resolution process involving the authority of state institutions must be free from interference so that the Constitutional Court's decisions have constitutional legitimacy and maintain the stability of Indonesia's constitutional system (Aryani et al., 2022).

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8. **The importance of decisions based on the constitution, trial facts, and not political interests.**

   The Constitutional Court's decisions must be based on the constitution, laws and regulations, and the facts revealed during the trial, demonstrating the application of the principles of the rule of law and constitutional supremacy. As the guardian of the constitution, the Constitutional Court is obligated to produce objective, fair decisions and provide legal certainty through a careful assessment of evidence, witness testimony, expert opinions, and the arguments of the parties (Kansil & Nadilatasya, 2024; Islami & Wiraguna, 2025).

   Furthermore, Constitutional Court decisions must be free from political interference and interests to maintain the institution's independence, impartiality, and legitimacy. Therefore, constitutional judges are required to uphold a code of ethics and integrity so that every decision is truly based on the constitution and objective legal reasoning, not on specific political interests (Susanti, 2025).

9. **Strengthening the transparent and merit-based recruitment system for constitutional judges**

   The constitutional judge recruitment system is a crucial factor in maintaining the independence of the Constitutional Court. A less transparent selection mechanism has the potential to lead to politicization, conflicts of interest, and undermine public trust. Therefore, transparency and public participation need to be strengthened to ensure the recruitment process produces judges with independence and integrity (Wijayanti et al., 2015).

   The recruitment of constitutional judges should implement a meritocratic system that considers the competence, integrity, experience, and track record of prospective judges. An open selection process, accompanied by a fit and proper test and public participation, is a crucial step in strengthening accountability and maintaining the independence of the Constitutional Court (Wijayanti et al., 2015).

10. **Optimizing the role of the Constitutional Court's Honorary Council (MKMK)**

    The Constitutional Court's Ethics Council (MKMK) plays a role in upholding the honor, integrity, and adherence to the code of ethics of constitutional judges. However, the MKMK's effectiveness still faces challenges, particularly regarding institutional independence and the authority to optimally carry out ethical oversight (Warsyim & Harmoko, 2025).

    Therefore, strengthening the Constitutional Court (MKMK) requires optimizing its repressive function in enforcing ethical sanctions, as well as its preventive function in the form of supervision, evaluation of judicial behavior, and strengthening a culture of integrity. These

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steps are crucial for maintaining the neutrality of constitutional judges and increasing public trust in the Constitutional Court (Warsyim & Harmoko, 2025).

11. **Enforcement of code of ethics and prevention of conflicts of interest**

    Enforcing the code of ethics is a key instrument for maintaining the integrity, professionalism, and neutrality of constitutional judges. Therefore, any ethical violations must be dealt with consistently, objectively, and without discrimination to maintain the credibility of the Constitutional Court.

    In addition, potential conflicts of interest due to personal relationships, political affiliations, or professional relationships must be prevented through a disclosure of interest declaration mechanism and withdrawal of recusal if there is potential bias in handling the case.

12. **Transparency and accountability of the trial process and decisions**

    Transparency is a crucial principle in realizing a Constitutional Court that is accountable and trusted by the public. The transparency of the trial process, decisions, and legal considerations of judges plays a role in increasing public trust and strengthening the legitimacy of the constitutional court (Winatha & Atmaja, 2025).

    Conversely, low transparency can create negative perceptions about the Constitutional Court's independence and neutrality. Therefore, implementing the principle of openness is crucial for maintaining the credibility and legitimacy of the Constitutional Court (Winatha & Atmaja, 2025).

CONCLUSION AND SUGGESTIONS

The Constitutional Court (MK) holds a crucial position in Indonesia's constitutional system as both the guardian of the constitution and its final interpreter. Through its authority to review laws, resolve disputes over the authority of state institutions, dispute election results, and decide on the House of Representatives' opinion regarding alleged violations by the President/Vice President, the MK plays a vital role in upholding the supremacy of the constitution, democracy, and protecting citizens' constitutional rights.

In carrying out these functions, the principles of independence and neutrality are essential for constitutional judges. Independence ensures judges are free from interference from other authorities, while neutrality ensures judges are impartial and base their decisions solely on the constitution, the law, and the facts of the trial. These two principles are reinforced by the

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constitutional basis of the 1945 Constitution, the Constitutional Court Law, and the Sapta Karsa Hutama code of ethics.

However, in practice, the Constitutional Court's neutrality faces various challenges, such as the politicization of judicial recruitment, conflicts of interest, violations of the code of ethics, and corruption cases involving judges. These factors demonstrate that disruptions to neutrality stem not only from individual judges but also from institutional systems, selection mechanisms, and political influence.

The impact of this disruption of neutrality is very serious, including a decline in public trust, a weakening of the independence of the judiciary, a diminishing of the legitimacy of Constitutional Court decisions, and a weakening of the protection of citizens' constitutional rights. This situation could ultimately shift the supremacy of the constitution to the dominance of political interests.

Therefore, strengthening the Constitutional Court's neutrality requires several strategic steps, including improving the merit-based and transparent recruitment system, optimizing the role of the Constitutional Court's Honorary Council, strictly enforcing the code of ethics, preventing conflicts of interest, and increasing transparency and accountability in the judicial process. This will enable the Constitutional Court to optimally fulfill its role as an independent, neutral, and publicly trusted guardian of the constitution.

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