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Legal Assistance and Penal Mediation in Theft Cases Involving Physical Altercations: Enhancing Pancasila Values in Kenteng Village

*Bantuan Hukum dan Mediasi Pidana dalam
Kasus Pencurian dengan Kekerasan Fisik:
Penanaman Nilai-Nilai Pancasila di Desa
Kenteng*

Ridwan Arifin^a✉, R. Benny Riyanto^a, Nurul Fibrianti^a, Karsinah^a,
Bintang Rafli Ananta^a, Zainurohmah^a, Dede Indraswara^a, Galih Niken
Anggoto Sulaksmi^a

^a Universitas Negeri Semarang, Semarang City, Indonesia

✉Corresponding email: ridwan.arifin@mail.unnes.ac.id

Abstract

Cases of theft leading to altercations pose significant legal and social challenges that require effective resolution strategies. In Kenteng Village, such incidents frequently escalate into prolonged conflicts between perpetrators and victims. This study aims to evaluate the effectiveness of



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legal assistance in theft cases through penal mediation, with a focus on reinforcing Pancasila values at the village level. A qualitative approach with an in-depth case study methodology was employed. Data were collected through interviews with perpetrators, victims, authorities, and mediators, as well as document analysis. The study investigates how legal assistance and penal mediation can facilitate conflict resolution while supporting the application of Pancasila values in the case resolution process. The findings reveal that integrated legal assistance and penal mediation can reduce tensions between disputing parties and increase the likelihood of peaceful resolution. Penal mediation, involving a third-party mediator, enables constructive dialogue and fair settlements, considering the interests of both parties. The reinforcement of Pancasila values, such as social justice, humanity, and unity, proves effective in fostering mutual respect and tolerance within the village community. In conclusion, legal assistance and penal mediation not only address legal disputes but also strengthen Pancasila values within the community. Recommendations for future research include the development of mediation and legal assistance training programs based on Pancasila values to extend their application to other regions.

KEYWORDS *Legal Aid, Penal Mediation, Theft*

Introduction

Theft has become one of the crimes that disturbs people in various parts of the world. In its various forms, theft not only causes material losses to victims, but also disrupts social peace and security. The phenomenon of theft has become the focus of attention not only from a legal and police perspective, but also in a social, economic, and psychological context. In everyday life, we often hear about or even become victims of theft. Whether it is a major theft involving robbery or a minor theft such as theft

of personal belongings, every theft incident has a significant impact on individuals and society as a whole.¹

Theft, in the context of criminal law, is an act that violates the norms and regulations set by the state. In various legal systems, including in Indonesia, theft is regulated by law and is subject to sanctions according to the level of crime committed. In positive Indonesian law, the crime of petty theft is regulated by Article 364 of the Criminal Code.² This article states that acts described in Articles 362 and 363 of the Criminal Code, as well as acts described in Article 365 of the Criminal Code if not committed in a house or closed yard that has a house, and if the price of the stolen goods is not more than two hundred and fifty rupiah, will be subject to sanctions for petty theft with a maximum prison sentence of three months or a maximum fine of sixty rupiah.³ Not only does theft harm the victim directly, it also creates instability in society. Therefore, handling theft is very important in maintaining public security and order and upholding justice. In the midst of efforts to minimize the negative impacts of theft, penal mediation is becoming increasingly relevant as an alternative

¹ Rara Putri Delia, "Analisis Determinan Penyebab Timbulnya Fear of Crime Pada Kasus Pencurian di Kalangan Ibu Rumah Tangga." *Indonesian Journal of Criminology* 5, no. 1 (2009): 108879; Azis Al Rosyid, et al. "Kajian Kriminologi atas Kasus Anak Sebagai Pelaku Tindak Pidana Pencurian (Studi di Wilayah Sukoharjo, Jawa Tengah, Indonesia)." *Seminar Nasional Hukum Universitas Negeri Semarang* 5, no. 2 (2019).

² Arief Bestavianor, Sriono Sriono, and Toni Toni. "A Juridical Review on the Regulation of Criminal Offenses in Cases of Violent Theft from the Perspective of the Criminal Code." *Enrichment: Journal of Multidisciplinary Research and Development* 2, no. 5 (2024); Reda Manthovani, "Implementation of Criminal Law in Indonesia." *YURISDIKSI: Jurnal Wacana Hukum dan Sains* 16, no. 4 (2021): 266-274.

³ Astin Ratri Nur Anggraini Basuki, et al. "Minors and Crime: Law and Criminological Analysis on Theft by Children (Case of Central Java, Indonesia)." *Law Research Review Quarterly* 9, no. 1 (2023): 71-88; Rian Prayudi Saputra, "Perkembangan tindak pidana pencurian di Indonesia." *Jurnal Pahlawan* 2, no. 2 (2019): 1-8.

solution that offers an opportunity for perpetrators and victims to find a satisfactory solution together.

Examined from a historical perspective, criminal law as it is known today has gone through a long series of changes. Initially, criminal law was seen as an effort to respond to actions that harmed the interests of others, which were then followed by retaliation. This retaliation was initially considered the responsibility of the individual who was harmed or affected by the action, but over time, this responsibility developed into the responsibility of the family and even society at large.⁴

However, over time, there have been changes and complexities in society, while on the other hand, the regulation of law-making tends to become more partial. As a result, the public nature of criminal law began to shift, and there was a shift towards the private realm. This phenomenon gave rise to the practice of penal mediation as a form of out-of-court settlement. Penal mediation became well-known and was adopted as an alternative in resolving legal conflicts by involving the parties directly involved, outside the formal judicial process. The settlement of minor criminal cases through the judicial system based on the aspect of retaliation was considered unsatisfactory and unfair to both parties, both the victim and the defendant. They believed that a fairer solution was to reach a peace agreement aimed at recovery, not just retaliation.

The existence of penal mediation has become a new subject explored from both theoretical and practical perspectives. Over time, with the increasing number of cases filed in court, the strategy of polarization and the implementation of penal mediation mechanisms have emerged as a solution to reduce the workload of the courts, as long as it is mutually desired by all parties involved, including suspects and victims. The main

⁴ Antony Antony. "Balancing Justice and Reconciliation: Restorative Approaches to Criminal Defamation Settlement." *Barelang Journal of Legal Studies* 1, no. 1 (2023): 15-30; Beby Suryani Fithri, and Windy Sri Wahyuni. "Restorative justice approach in crime of humiliation through social media." *Veteran Law Review* 4, no. 2 (2021): 143-156.

goal is to achieve broader interests, namely maintaining social harmony.⁵ In handling criminal cases, penal mediation emphasizes the concept of restorative justice which requires perpetrators of criminal acts to acknowledge their responsibilities and fulfill the interests of the victim so that a settlement that benefits both parties can be achieved. In penal mediation, victims and perpetrators of criminal acts are placed in a direct meeting to state their demands, with the aim of achieving peace between them. Although in Indonesian positive law, criminal cases generally must be resolved through the court process, there are certain situations where out-of-court settlement is possible.

Mudzakkir presented the classification of types of cases that can be resolved through penal mediation as follows:

1. Cases of violations of criminal law that fall into the category of complaint offenses, whether submitted absolutely or relatively.
2. Cases of violation of criminal law which are subject to a fine, and the perpetrator has paid the fine in accordance with Article 80 of the Criminal Code.
3. Cases of violations of criminal law that fall into the category of "violations" and are not considered "crimes", which are only punishable by a fine.
4. Cases of criminal law violations that fall within the realm of administrative law and criminal sanctions are considered a last resort.

⁵ Anggita Anggraeni, "Penal mediation as alternative dispute resolution: A criminal law reform in Indonesia." *Journal of Law and Legal Reform* 1, no. 2 (2020): 369-380; Emmanuel Ariananto Waluyo Adi, "Penal mediation as the concept of restorative justice in the draft criminal procedure code." *Lex Scientia Law Review* 5, no. 1 (2021): 139-164; Sri Hartanto, Indah Sri Utari, and Ridwan Arifin. "Implementation of Penal Mediation in the Perspective of Progressive Law (Study at the Semarang City Police Department)." *IJCLS (Indonesian Journal of Criminal Law Studies)* 4, no. 2 (2019): 161-188.

5. Criminal law violation cases that fall into the minor/all-minor category, and law enforcement officers have discretionary authority in handling these cases.
6. Criminal law violation cases are usually stopped or not submitted to court (deponir) by the Attorney General in accordance with his authority.
7. Cases of violations of criminal law that fall into the category of violations of customary criminal law that are resolved through customary institutions.⁶

Through penal mediation, the achievement of the peak of justice is realized with the agreement between the perpetrator and the victim in a criminal case. Both the perpetrator and the victim are expected to be able to jointly seek and achieve the best solution to resolve the case. In achieving this solution, both can offer, agree, and negotiate compensation, so that the results benefit both parties (win-win solution). In addition, penal mediation also has positive philosophical implications by creating a faster, simpler, and lower-cost trial because it involves a relatively smaller number of parties compared to the conventional trial process through the Criminal Justice System (CJS).⁷

Similar to the case that will be discussed, namely the case of theft through penal mediation. This case involves a report of a watch theft reported by Muhammad Zidan. Zidan was suspicious of Fadli because the friend had borrowed his room, which then triggered a physical conflict

⁶ See Erma Rusdiana, "Mediation Existence Criminal Penal Settlement." *UNTAG Law Review* 2, no. 1 (2018): 38-53; Anis Widyawati, "Penal Mediation as An Alternative Dispute Resolution of Social Conflict." *South East Asia Journal of Contemporary Business, Economics and Law* 9, no. 4 (2016): 2289-1560; Umar Husin, et al. "Construction of Criminal Settlement Law through Penal Mediation in Perspective Restorative Justice." *Perspectives of Law and Public Administration* 9, no. 2 (2020): 326-334.

⁷ Ratri Novita Erdianti, Wasis Suprayitno, and Sholahuddin Al-Fatih. "Penal Mediation as an Alternative Dispute Resolution for Indonesian Criminal Code." *Wacana Hukum* 26, no. 1 (2020): 39-48.

between Zidan and his friend, Fadli Izam Nugraha. Zidan reported it to the police, but because of the slow process from the police, he sought legal assistance. Zidan asked for legal assistance to resolve his case which we then suggested could be resolved through penal mediation. Then we looked for a way out to resolve the conflict with the best solution for both parties.

Legal Assistance in Theft Cases Resulting in Fights Through Penal Mediation

1. Chronology of the Case and Results of Penal Mediation

There was a report from a student named Muhammad Zidan or usually called Zidan, regarding the theft of one of his Alexander Christie brand watches, where this triggered a fight between him and his college friend named Fadli Izam Nugraha or usually called Fadli, where Fadli was suspected of being the perpetrator of the theft.

The chronology, on Tuesday, January 30, 2024, Zidan and 4 of his classmates were playing in his rented house located on Jl. Kalimasada III. Then the next day when Zidan wanted to leave, he realized that the watch in his room was not in the place where he usually put it. Zidan had tried to find and ask about the watch to his boarding house friends but they didn't know. Then Zidan also asked 3 of his friends who were also in his boarding house at that time, namely Rizki, Wildan, and Sarah, but they also didn't know.

In fact, Zidan had already suspected Fadli because at that time Fadli had borrowed his room on the pretext of praying. His suspicion was strengthened by Rizki's statement who had just remembered that he had seen the watch in question in Fadli's bag when he was borrowing a cellphone charger that was stored in Fadli's bag. After finding out about this, Zidan and his three friends from earlier then approached Fadli at his boarding house which was located not far from Zidan's rented house to

ask about his missing watch. Fadli denied this, but Zidan remained convinced that Fadli was the one who stole it because only Fadli entered his room. Their conversation heated up and finally ended in a fight in the boarding house. Because he was already very confused with anger, Zidan kicked Fadli's stomach until he fell. Fadli who could not accept it, retaliated by pushing Zidan until he hit the wall. Because the atmosphere was getting heated, their three friends quickly broke them up.

After the incident, Zidan decided to report Fadli to the authorities on February 6, 2024. However, a month had passed since he reported it and there was no follow-up from the police, until finally Zidan happened to see our Instagram story about legal assistance for criminal cases. Zidan then called the contact number of one of us listed in the pamphlet on the Instagram story, then asked to meet and be accompanied so that his case could be resolved quickly.

On March 15, Zidan and one of his friends, Rizki, met with us at the Entrepreneurship Building of Semarang State University to explain the incident that happened to him. From this explanation, we asked Zidan about his case whether he wanted to continue through the court process because the report had been submitted to the police, or whether he wanted to resolve it through penal mediation with us as law faculty students who already understand and are able to assist in resolving cases through mediation. In response to this question, Zidan decided to continue his case with us through penal mediation. We also asked Zidan to ensure that Fadli also agreed to resolve the case through mediation and to include Fadli in this mediation process as a condition. The next day, we received news from Zidan that Fadli agreed to mediate, so we made a schedule to hold a second meeting attended by Zidan as the victim with Sarah and Rizki as witnesses, and Fadli as the alleged perpetrator by bringing his witness, Wildan.

In this second meeting, precisely on Wednesday, March 20, 2024, we asked for the chronology from each other's perspectives. We asked for the chronology from Zidan's perspective first. Zidan told what he

experienced and about his suspicions about Fadli. Zidan's suspicions were strengthened by the statement given by Rizki about what he saw. Rizki saw Zidan's watch in Fadli's bag when he was going to take Fadli's cellphone charger that he was going to borrow. In addition, Sarah, who was also at the scene at that time, felt strange because she saw Fadli's movements which were quite suspicious, but Sarah ignored it, until finally Zidan said that he had suspicions about Fadli and Sarah also told about what she saw.

After listening to the explanation from Zidan, Rizki and Sarah, we then asked about the chronology of the incident from Fadli's point of view. Fadli explained that he did not take Zidan's watch because when he borrowed Zidan's room to pray he did not see the watch in Zidan's room. Wildan as a witness for Fadli also provided a statement which in essence he was sure that it was not Fadli who stole the watch, because he was a close friend of Fadli and he knew that Fadli was an honest and diligent person. Because, when he came home after playing at Zidan's rented house, he and Fadli went home together and Wildan had left his cellphone in Fadli's bag and he did not see Zidan's watch in the bag.

However, Zidan again denied the statements from Fadli and Wildan because only Fadli was in his room at that time. Zidan was also very sure that his watch was placed on the study table as he usually put it. In addition, Zidan had also searched for his watch throughout the room and items that could possibly hide the watch, especially the bag in his rented house and asked his friends in the same rented house but none of them saw the watch.

Because the atmosphere is getting more heated and each party is carried away by emotions so that it is not possible to continue this mediation process, we decided to continue this mediation at the next meeting as the third meeting. With the hope that at this third meeting, each party can provide honest information and not be carried away by emotions so that this mediation process can run smoothly and find the

right and mutually beneficial solution according to the win-win solution concept which is one of the requirements for the fulfillment of the results of penal mediation.

Next, we held a third meeting on Saturday, March 23, 2024, located at the Katsukai Entrepreneurship Building, Semarang State University. At this meeting, only Zidan and Fadli were present to create a more conducive situation. At the beginning of the meeting, we asked whether both parties were willing to continue the mediation process without any pressure from either party and both answered that they were continuing the mediation of their own accord and without any pressure from any party. Then we invited Fadli to give his statement first.

In this meeting, Fadli finally admitted that he was the one who had taken Zidan's Alexander Christie watch that was on the study table in Zidan's room. Fadli admitted that he took Zidan's watch because he was in a very desperate situation because he had to pay for his motorbike repairs that were due. Because of that, Fadli dared to steal Zidan's watch because he knew that the watch had a fairly expensive price if sold, so the money from selling the watch would later be able to pay off the motorbike repair costs. However, the watch was not sold in the end because Zidan had suspected him first and asked him.

Finally, from Fadli's confession, Zidan asked for his watch back and Fadli returned Zidan's watch. Fadli also apologized to Zidan and promised not to do the same thing again. Fadli also asked Zidan to withdraw the police report he had made. Upon Fadli's apology, Zidan finally forgave Fadli and agreed to withdraw his report to the police. They agreed to make peace and forgive each other because they realized that they had been friends for a long time and Zidan also understood because Fadli's condition was indeed in a difficult situation.

2. The Role of Legal Aid in Resolving Criminal Cases

Although various efforts have been made to improve the effectiveness and efficiency of the justice system in order to achieve better justice, the expected results have not been fully achieved to date. Various steps have been taken, ranging from legislative reform to the application of technology in the administration of justice, but challenges in realizing an ideal justice system still remain. One of the obstacles often faced is the slow trial process. Although efforts have been made to speed up the trial process, there are still many cases that drag on and take a long time. This can be caused by various factors, such as a lack of adequate human resources and infrastructure, as well as a heavy workload for judges and judicial officers.

In addition, the aspect of justice is also often questioned. Although the main goal of the justice system is to achieve justice for all parties, sometimes the decisions taken are still considered unfair by the community. Factors such as personal bias, imbalance of power, and differences in treatment of various social groups are still problems that need to be addressed. In facing this challenge, efforts are continuously made to improve the quality of the justice system. Comprehensive reform in terms of both policies and existing practices is key to answering this challenge. The need for reform in the education and training system for legal professionals cannot be ignored, so that they can better understand and apply the principles of justice better.

In addition, it is also necessary to consider the use of technology in the judicial process. The application of information and communication technology can help speed up the flow of the judicial process, facilitate public access to legal information, and increase transparency and accountability in the judicial system. By continuing to make efforts for improvement and reform, it is hoped that the judicial system can become more effective and efficient in realizing justice for all parties. This will not

only increase public trust in the judicial institution, but will also have a positive impact on the stability and progress of the law as a whole.

One of the steps taken to achieve justice or equality in law is through the provision of legal aid for every citizen involved in a legal case. Legal aid in the context of the criminal case process is the responsibility of the state which is reflected in the initial examination stage by guaranteeing the right to choose and contact legal counsel from the time of arrest or detention. In Soerjono Soekanto's view, legal aid basically refers to assistance provided by legal experts to individuals in society who need to uphold their rights and obtain fair legal protection.

The principle of providing legal aid in the context of criminal cases emphasizes that every individual must have equal access to adequate legal representation during the legal process. This is not only a constitutionally guaranteed right, but also an integral part of the principle of justice in the legal system. In this context, legal aid is not only seen as a practical necessity, but also as a mechanism to ensure that the legal process is fair and that every individual has an equal opportunity to defend themselves. By ensuring that suspects have access to legal counsel, the state seeks to reduce inequalities in the legal system and ensure that decisions are based on evidence and law, rather than power or wealth.

It is important to remember that legal aid is not just about providing legal advice, but also about providing emotional and mental support to individuals involved in often complex and challenging legal processes. This ensures that the legal process is not only technically fair, but also substantively fair. By strengthening the legal aid system and ensuring that every individual has equal access to adequate legal representation, the state plays a vital role in maintaining the integrity and public confidence in the legal system as a whole.

Legal aid has become an integral part of the legal system both internationally and in Indonesia. This shows the importance of the role of legal aid in the law enforcement process. The presence of legal aid is a

response to the low level of public awareness of their legal rights and the various technical processes involved, including information on the availability of legal aid that can be accessed free of charge by the underprivileged. The importance of legal aid is especially evident in providing access to justice for the underprivileged. This is reflected in the state's obligation to protect its citizens, as mandated in Article 27 Paragraph (1) of the 1945 Constitution, which is implemented through Law No. 16 of 2011 concerning Legal Aid.

As time goes by, legal aid is becoming increasingly important to ensure that all individuals have equal access to justice before the law. This also includes preventive efforts so that no one is marginalized or does not receive fair treatment in the legal system. It should be understood that legal aid is not only limited to the litigation aspect, but also includes non-litigation efforts such as legal consultation, mediation, and advocacy. This helps ensure that people in need receive full support in dealing with the various legal problems they face.

The principles related to legal aid in Indonesia have been clearly regulated in laws and regulations, especially in Law Number 8 of 1981 concerning Criminal Procedure Law (KUHAP). In the General Explanation of Part 1 number (3) letter (e) of the Criminal Procedure Code, it is explained that the principle of legal aid confirms that every individual involved in a case has the right to obtain legal aid to defend himself. The principle of legal aid in the context of criminal procedure law in Indonesia has the main objective of protecting human rights as a whole, both morally and materially. This principle emphasizes the importance of maintaining human dignity and ensuring that every individual has the right to proper defense in the legal process.

It is important to note that this principle of legal aid is not only theoretically valid, but also has a significant impact in practice. This is because legal aid ensures that every individual, regardless of their social or economic background, has an equal opportunity to obtain legal protection

and defend their rights. This principle is also in line with efforts to strengthen the protection of human rights in Indonesia. By providing fair and equal access to legal aid, the state ensures that there is no discrimination in access to justice, and everyone has an equal opportunity to defend themselves in the legal process. Thus, the principle of legal aid in the context of criminal procedure law in Indonesia is not only a legal obligation, but also a form of the state's commitment to the principles of humanity and the protection of human rights as a whole.

In the evolution of legal aid provision, there are various forms including assistance from individuals such as advocates or lawyers, law firms, and legal aid institutions spread both at the national and local levels, including in city or district areas. In addition, there are also legal aid institutions that operate in campus or university environments. The main purpose of the existence of legal aid institutions is to protect the common people from various legal problems they face by providing assistance in both litigation and non-litigation contexts.

The concept of services provided by legal aid institutions refers to the principles contained in the institution's articles of association and bylaws. Some of these concepts include:

- a) **Providing Legal Services to the Poor:** One of the main focuses of legal aid institutions is to provide assistance to those who are financially disadvantaged. This aims to ensure that access to justice is not limited by economic limitations, so that every individual has an equal opportunity to defend their rights.
- b) **Increasing and Developing Public Legal Awareness:** In addition to providing direct services, legal aid institutions also aim to increase public understanding of their legal rights. This is done through counseling, training, and legal education campaigns aimed at empowering the public to understand and exercise their rights as legal subjects.

- c) Striving for Legal Change and Improvement: Legal aid institutions also play a role in advocating for change and improvement in the legal system to accommodate the evolving needs and demands of society. This includes advocating for changes in laws, regulations, and policies aimed at strengthening legal protection for all individuals.

Based on the case we handled which involved a theft that resulted in a fight between two students, namely Zidan and Fadli, related to the loss of Zidan's watch. In the context of legal aid, this case reflects the importance of the role of legal aid in resolving conflicts and fulfilling individual rights. First of all, Zidan suffered a loss due to the theft of his watch and felt the need to report the incident to the authorities. However, after a month had passed without significant developments from the police, Zidan sought legal assistance through social media. This shows that people seek alternative legal solutions when they are dissatisfied with the response of official institutions.

Second, when Zidan decided to continue the legal process through penal mediation, this highlights the role of legal aid institutions in providing alternative conflict resolution options. In mediation, the role of the mediator from the legal aid institution helps both parties to reach a fair and mutually beneficial agreement without going through a long and expensive court process. Third, through mediation, Zidan and Fadli were finally able to resolve their conflict peacefully and forgive each other. This shows that legal aid is not only about upholding justice through formal legal processes, but also about promoting peace and reconciliation between the disputing parties.

In addition, through this mediation process, both parties can understand each other's perspectives and needs, allowing them to reach a more mutually satisfactory solution. Overall, this case shows that legal aid is not only about providing legal advice or representing clients in court, but also about providing assistance and facilitation to resolve conflicts in a

peaceful manner and respecting individual rights. In this case, legal aid institutions act as mediators to help resolve conflicts in a more effective and dignified manner.

Conclusion

In conclusion, the integration of legal assistance and penal mediation in theft cases involving physical altercations has proven highly effective in Kenteng Village. By employing legal assistance, the community ensures fair and equitable resolution of disputes, supporting both victims and perpetrators in navigating the legal system. This approach helps to uphold justice and maintain the rule of law while addressing the immediate legal issues. Penal mediation, on the other hand, facilitates restorative justice by encouraging dialogue between conflicting parties. This method aims to repair relationships and address the root causes of the conflict, promoting reconciliation and mutual understanding. In Kenteng Village, penal mediation has successfully transformed adversarial disputes into opportunities for community healing and growth.

These practices align with Pancasila values, which emphasize humanity, social justice, unity, and deliberative democracy. Legal assistance upholds fairness and respect, while penal mediation embodies social justice and unity. By integrating these values into conflict resolution, Kenteng Village not only resolves individual cases effectively but also strengthens communal bonds and reinforces shared principles. The success of this approach demonstrates its potential as a model for other communities. It highlights how combining legal and cultural practices can enhance social harmony and uphold traditional values. Overall, the implementation of legal assistance and penal mediation in Kenteng Village serves as a testament to the positive impact of aligning justice practices with cultural principles, fostering a more cohesive and just society.

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