



Driven into the Trap: How Indigenous People Move Toward Individual Land Titling in Central Kalimantan, Indonesia

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ABSTRACT. For the last twenty years, many efforts have been made by indigenous peoples and local communities in Indonesia to get legal recognition of their rights to land and natural resources. An Indonesian non-government organization, WALHI, held a workshop in Tana Toraja in 1993 where the term *masyarakat adat* (people governed by custom) was introduced to designate “indigenous peoples” (Davidson and Henley 2007); since then, the state, through national and local laws and regulations, has issued a number of formal recognitions (Warman 2014). Justice is the main issue raised by indigenous peoples’ organizations in demanding recognition (AMAN First Congress 1999, Second Congress 2003). Bearing the idea of justice and equality as the central issue of *adat* revivalism (Davidson and Henley 2007), indigenous people demanded recognition of their territory where they would exercise their communal rights over land rather than individual ownership. Almost in that same period, however, there has been a rapid promotion of individual land titling in indigenous communities. This paper argues that the process of individuation of land rights is driving indigenous and local communities into a trap that limits their options for land titling. There are five big forces that, if joined with individual preference, push members of indigenous communities to choose individual land rights: the state through its policies and regulations; mega development projects and their local dynamics; internal dynamics of the communities; the market; and globalization in communication.

KEYWORDS. indigenous people · *masyarakat adat* · land titling · Central Kalimantan · Indonesia

INTRODUCTION

A joint report by Sawit Watch, World Agroforestry Centre, HuMa, and Forest Peoples Programme states that

Indonesia is . . . one of the world’s most populous and rural countries, with a total population of 220 million people, of whom between 60 and 90 million people make a livelihood from areas classified as ‘State Forest

Areas,' which cover some 70% of the national land area. A large proportion of the rural people regulate their affairs through custom and are referred to as 'people governed by custom' (*masyarakat adat*)—referred to as 'indigenous peoples' in international law. (Colchester et al. 2006, 11)¹

An important characteristic of communities "governed by custom" used to be communal land ownership where *adat* (customary) institutions have authority over the land and regulate the rights of use of community members. However, my experience in Central Kalimantan² suggests that members of the indigenous communities have also been practicing individuation of land ownership by adopting individual land titles.

This paper argues that there are five main drivers that pressure people of indigenous communities in Kapuas Regency, Central Kalimantan, to opt for individual land rights as promoted by the dominant property rights regime, rather than communal land rights as inherited by their *adat* (customary) system. These drivers are: the state through its policies and regulations, local dynamics under the influence of mega development projects, internal dynamics of the communities, the market, and globalization in communication.

These five forces have been working simultaneously throughout the history of the communities to push them into the trap of "individuation processes" by which members of communities work, behave, and make claims according to individual preferences. The term "individuation" means the cognitive process of individuating an object (Lowe 2009). The paper will use the term to describe the process in indigenous communities where members have "singled out" a communal object, that is, communal/collective land rights, to convert into individual land titles. In economics, the concept of individuation places considerable emphasis on the individual as an economic agent operating in land and commodity markets, among others (Davis 2003, 13). As the five forces pressure community members to be individual economic agents, economic transactions between agents would only take place between two individual economic entities: individual community members and/or corporations, each following individual rights.

The communities that are the focus of this paper are popularly known as *masyarakat adat* (communities governed by custom)³ or *masyarakat hukum adat* (communities governed by adat law, hereafter

MHA). The latter term dates back to the colonial period when communities governed by adat were socially mapped.⁴ The term “indigenous communities,” which I use in this paper, refers to MHA. These communities are generally considered to have the following characteristics: they depend predominantly on land and forest for their livelihood; they have, to various degrees, a kind of self-governing system referred to as adat; and they consider themselves as communities within a claimed territory in which adat authorities exercise internal rules, following an adat judiciary system (see, for instance, the criteria mentioned in the Forestry Act 41/1999). On the other hand, there are communities in and around forest areas that are governed by the *desa* (state village system) in which the village authority is the lowest level of the Indonesian government structure and the village area is *wilayah desa* (formally designated by the state). I use the term “local communities” to refer to those communities (see also Safitri 2010, 126).

MANTANGAI, CENTRAL KALIMANTAN: MEGA PROJECTS AND INDIGENOUS COMMUNITIES

This paper focuses on indigenous communities in Mantangai, a subdistrict in Kapuas Regency, Central Kalimantan, Indonesia, specifically the Mantangai Hulu community. Mantangai has experienced the implementation of various mega projects on its land: logging concessions, the government’s Mega Rice Project, oil palm plantations, a peat restoration project, including a Reducing Emissions from Deforestation and Forest Degradation (REDD+) Demonstration Activity, all of which covered a huge area where many indigenous communities have been living for decades.

Mantangai is composed of thirty villages (Kapuas 2016). Of these, seven villages (including Mantangai Hulu)⁵ have been fieldwork sites for the Forest Peoples Programme (a United Kingdom-based international nongovernment organization [NGO]) and Pusaka (an Indonesian NGO). They aim to assist communities in defending their rights against large-scale development projects through the Kalimantan Forest Climate Partnership (KFCP) with its REDD+ Demonstration Activity. The area is sparsely populated, with around 37,000 people on 6,128 square kilometers of land (Badan Pusat Statistik 2014), or a population density of around six people per square kilometer.

Dayak Ngaju is the dominant ethnic group in the area, and the Ngaju language is the most common language in Central Kalimantan.

Communities in Mantangai mostly depend on agriculture (rubber gardens and rotational paddy fields), forest extraction (timber, honey, rattan, and *gemor*, a type of peat swamp tree) and fishing. Some people from these communities also work in gold mines along the Kapuas River. Around 21,000 residents of Kapuas District live below the local poverty line.⁶

Rubber was introduced to the area in the 1920s by the Dutch colonial government and Chinese traders. Since then, indigenous and local communities partly shifted from traditional swidden-rice cultivation to smallholder rubber plantations (Dove 1993 cited in Suyanto et al. 2009). Rattan is another commodity that links communities to the market. Since the 1960s, when the demand for rattan was high, farmers started to intercrop rattan in their rubber gardens (Suyanto et al. 2009). The commercial growing of rubber and rattan has driven individual ownership of garden lands. The rubber gardens are now individually owned.

Between 1970 and 1996, major logging concessions awarded to some fifteen large timber companies have cleared a vast forest area. Before that time, people in Kapuas used timber only for local needs (Suyanto et al. 2009). In 1971, then President Suharto declared that Indonesia's foreign debt could be repaid by exploiting a third of Indonesia's forests that covered some 120 million hectares at that time (Simarmata 2007). This period saw a substantial change in the livelihood of community members. They shifted from traditional swidden (or rotational) farming to labor in the logging concessions as a main source of cash (Suyanto et al. 2009). This development, I speculate, added to the individuation process in the Mantangai Hulu village. Many community members started to gain their livelihood through individual efforts, mainly to earn money (by working in the logging industry), which was different from traditional swidden farming that had characteristics of collective labor and community sharing.⁷

Subsequently, the *Proyek Pengembangan Lahan Gambut Sejuta Hektar* (Mega Rice Project) was introduced and implemented by Suharto's New Order regime in the second half of the 1990s to support the government's national food self-sufficiency program. It encompassed a peatland area of some 1.4 million hectares (Tejoyuwono 1998), including areas where the logging companies had been active. Some 85 percent of the area was located in Kapuas District (Yayasan Petak Danum 2008). Many indigenous and local communities have been living in that area for a long time, mostly along the Kapuas River

(Suyanto et al. 2009). When the project was stopped in 1998, only 42,000 hectares of the total area had been developed into irrigated rice fields, of which 31,030 hectares had been awarded to 13,500 households of transmigrants with individual land rights, while 10,970 hectares were waiting for new transmigrants. After Reformasi 1998, the Mega Rice Project was called a “mega disaster” (Suyanto et al. 2009). Many migrant paddy farmers left the *sawah* (paddy fields) due to the decreasing quality of water supply for irrigation. Finally the development of the rice project was terminated by Presidential Decree 80/1998. The project left a severely degraded peatland and a huge deforested area due to logging and illegal occupation. The land-use practices of many communities in the Mantangai subdistrict were destroyed by this project.

During the project, the government did not compensate the communities for the loss of their land since the government did not acknowledge their land rights under the adat system. Only after Reformasi and the termination of the Mega Rice Project did the government try to provide “fair” compensation to the communities. One unforeseen effect of the compensation payment was that it prompted some community members to obtain a formal statement of individual land ownership from their village head known as *surat keterangan tanah* (letter of land clarification, SKT) (cf. Galudra et al. 2010).

The expansion of oil palm plantations was the next large-scale development, primarily in the (former) area of the Mega Rice Project. By June 2009, some 700,000 hectares in Central Kalimantan were covered by sixty four licenses for large-scale oil palm plantations that were based on state-provided land-use rights for plantations, legally known as *hak guna usaha* (commercial lease rights, HGU). But actual operational oil palm plantations, including those without HGU yet, already covered more than 1.6 million hectares at the time. Kapuas Regency had some 226,000 hectares planted to oil palm by 2009. The oil palm expansion led to many conflicts with the communities concerning overlapping land claims (Pemerintah Provinsi Kalimantan Tengah 2016). For instance, the Indonesian agribusiness company PT. Sakti Mait Jaya Langit had illegally taken possession of the rubber gardens of two communities that were located outside of its permitted concession.

Subsequent programs in the area include the Central Kalimantan Peatlands Project designed to address conservation, rehabilitation, and

sustainable development in 1.4 million hectares of land in the former Mega Rice Project area. Partly overlapping with this site is the REDD+ Demonstration Activity Project of the KFCP supported by the Australian government, covering 120,000 hectares, mostly in the Mantangai subdistrict and affecting primarily the Dayak Ngaju (KFCP 2009). As a state-supported project, the KFCP entailed a number of state regulations on adat land rights and adat institutions. We will see below that these regulations have triggered individual land titling among communities.

PRESSURES TO SHIFT FROM COMMUNAL TOWARD INDIVIDUAL LAND RIGHTS

Indigenous communities in Mantangai traditionally held communal land rights on their customary land. Many are trying to defend their customary land in the face of the mega projects presented above. But, as this section argues, five different but interconnected drivers are putting pressure on the communities in Mantangai to shift toward individual land rights.

The State

The main driver is the concept of rule of law and its related concepts of legal entity and individual rights. Indonesian laws and regulations only recognize as legal entities natural legal persons and artificial legal persons such as corporations and organizations as established by state law. The main principle for a legal entity to exercise its rights is legal recognition by the state.

The major principle underlying communal land rights expressed by indigenous communities is that their land is adat land, their ancestral land, different from land rights given by a state (be it a kingdom, sultanate, or nation-state). However, the actual situation among communities in Mantangai is quite different from the situation described in colonial studies of “jural communities” in Indonesia, i.e., indigenous communities with “distinct legal autonomy in domestic affairs” based on “discrete representative authority” and “discrete communal property, especially land, over which it exercises control” (Van Vollenhoven quoted in Holleman 1981, 43).

Van Vollenhoven described these communities as having *beschikkingsrecht* (right of avail or right of allocation) defined by the following characteristics (as enumerated in Burns 1989, 9–10):

1. The autonomous adat community and its members may make free use of virgin land within its area. It may be brought into cultivation; it may be used to found a village; it may be used for gleaning, etc.
2. Others may do the same there only with permission of that community; without it, they commit an offence.
3. For such use, outsiders must always pay some charge or give a gratuity in tribute; sometimes members of the community are also obliged to make such payments.
4. The autonomous adat community retains in greater or smaller measure the right to intervene concerning land already under cultivation within its area.
5. The autonomous adat community is accountable for whatever transpires within its area if there is no one else from whom recovery can be made (for example, offenses for which the culprit remains unknown).
6. The autonomous adat community cannot alienate the right of allocation in perpetuity.

These characteristics suggest that these communities had a certain autonomy vis-a-vis the state. This may be the reason why Dutch colonial studies used the term *dorpsrepubliek* (village republic) to denote such indigenous communities.

Today, these characteristics no longer fully apply to indigenous communities (MHA) in Indonesia, and particularly MHA in Mantangai. Most of the MHA communities in Mantangai now live in a village that is a social and administrative unit at the lowest level of the state's administrative structure, in an area formally designated by the state (though in some cases, the village boundaries are designated by participatory mapping). Community members can only exercise their rights within this area in terms of developing their garden, fishing, housing, and the like. The second characteristic (listed above) currently does not work well in practice, because permission to outsiders for use of the land is now granted by the state, implemented by the relevant

government office or ministry, manifested in the issuance of a legal permit. The third characteristic is still practiced by project developers in the form of compensation, but the fourth and sixth characteristics now depend much on the state, while the fifth is also regulated by the state, for example, by means of an environmental impact assessment (known as AMDAL in Indonesia's legal system).

At the national level, Indonesia's laws and regulations that include indigenous communities (MHA) stipulate in their articles that the state recognizes the MHA under certain conditions.⁸ These conditions include that the communities still exist and still practice their adat law and related judiciary process, that the adat institutions still have authority over their community, and that community members still follow their adat law. However, it is the state that has the authority to declare whether a community is MHA, based on research done by a team formed by the government. For MHA, this state acknowledgement is the most difficult requirement.

At the provincial level, two local regulations address the issue of MHA and their rights to land. First, the provincial regulations on the Dayak customary institution in Central Kalimantan⁹ state that the adat authority is appointed by the local government with a term of six years and the option of reappointment. Second, the local regulations on adat land and adat rights on lands in Central Kalimantan¹⁰ stipulate that the adat authority can issue a *surat keterangan tanah adat* (formal letter on individual ownership of adat land, SKTA). A study by the Partnership for Governance Reform 2015 demonstrated that SKTA has been used by community members to make permanent land transfers to other parties (Simarmata 2015).

Thus, two institutions at the village level currently have the authority to issue a formal statement of individual land ownership: the village head can issue an SKT and the *mantir* (village level adat authority) and *damang* (subdistrict level adat authority) have the authority to issue an SKTA. Both involve individual land titles, which can be used as collateral. Although individual land rights also exist within the communal customary land rights the communities traditionally held, the community members that have such individual access do not have the right to release the land permanently to outsiders. In contrast, the individual land titles based on SKT and SKTA follow the property rights regime in which the individual rights holder is the only one authorized to release the rights permanently.

Local Dynamics

With the implementation of the mega projects in the area, indigenous communities lost autonomous control over their land as this control was transferred to the investors and state agencies in charge of these development projects. The oil palm plantations in the area have legal permits they obtained from the state: a location permit from the *bupati* (local government), followed by a plantation development permit from the Ministry of Agriculture, and finally a cultivation rights title (HGU) for at least twenty five or thirty five years depending on the scale of the project, renewable for another twenty five years. During this period, the HGU holders can freely exercise their rights over the licensed area. No other party is allowed to work in the area without permission of the corporation. In other words, the autonomy of indigenous communities was effectively abolished and control over land is now in the hands of the oil palm companies that hold HGUs.

Similarly, in the implementation of the REDD+ Demonstration Activity project of KFCP, the project through its license had sole authority over the site from 2008 to 2012. When the community of Mantangai Hulu proposed to plant rubber in the village area through a proposed partnership scheme between KFCP and the community, KFCP rejected the community proposal and suggested to plant *jelutong* trees instead, which Mantangi Hulu farmers in turn refused (Forest Peoples Programme and Yayasan Pusaka 2012; see also Yayasan Pusaka, Forest Peoples Programme, and Yayasan Petak Danum 2011a, 2011b). As with the example above, there are many protests by communities regarding the implementation of the principles of free, prior, and informed consent. The core problem in this case concerns the representation of the communities; whereas the KFCP confers mainly with the *kepala desa* (village heads), communities demand that the KFCP acknowledge their freely chosen community representatives.

The provincial decrees on adat land and adat rights on land in Central Kalimantan (mentioned earlier) state that what can be claimed as adat land (through an SKTA) is only individual ownership over land. Hence, a community cannot claim a landscape, such as a huge solid area of forest, as adat land. On many occasions, government officials have said that the policy was issued to protect adat communities from losing their land. But an actual, negative consequence of this policy is that community members are particularly interested in an SKTA for transferring their land to others. Many community members currently

have their SKTA but they are still waiting for the signatures of the adat authorities at the village and subdistrict level to whom they should pay a fee. In Mantangai Hulu, there are some one hundred SKTA waiting for legalization by the state. That the SKTA can be used for land transfer is an important reason why it is preferred by community members.

Internal Dynamics in Communities

While NGOs promote collective adat land rights for indigenous communities in the post-Suharto period, we see in actual indigenous communities a sharp shift toward individual claims/individual titling of land as a way of securing claims over the land. In that sense, I would interpret the term “adat revivalism” (Davidson and Henley 2007) from a specific point of view: as a defensive strategy of indigenous and local communities throughout Indonesia to secure their rights to land, but mostly in the form of individual ownership rather than collective rights.

The discourse on communal customary land rights promoted by NGOs emphasizes “adat territory” (a generalized modern concept for various local terms) and “community” (as in “indigenous and local communities”) to refer to a spatio-temporal entity considered the locus of collective identity. Collective land rights are underscored. However, collective and individual claims to land have long coexisted in indigenous communities in Indonesia. Both are “included” within communal land rights.¹¹

Currently, we can see two stages in the response of indigenous communities to the NGO discourse of communal rights to customary land. The first is to strive for state recognition of their existence as “indigenous communities” (MHA) as they intend to gain access to land rights by using their collective identity as MHA. But this is not the end. The second is the effort of members of indigenous communities to get individual titles over parts of the land. The claim of a collective identity is just a bridge between the struggle to defend lands and the efforts to secure individual rights. “Communal rights” is the basis of their struggle to secure land in terms of collective claims. But it is just the first step to proceed with individual claims over land manifested in an individual title.

In Mantangai, as in other communities in the area, people have also tried to get individual land titles before and during their struggle for state recognition of their communal land rights. These individual land

claims are manifested in various forms: rights claims to rubber gardens, to oil palm smallholdings, and to households' gardens, as well as the individual titles gained through SKT and SKTA.

Following the abovementioned interpretation of "adat revivalism," I would argue that the discourse and advocacy of indigenous rights are pushing the "individuation process" in the community, by which legal options and economic opportunities have driven community members into various individual preferences. Here "individuation" is understood as the act or process of becoming distinct or individual, especially the process by which social individuals become differentiated one from the other.

The Market

The influence of the market can clearly be seen in the community's daily life. Since the colonial era, rubber has connected the community of Mantangai to the global market. Rubber has long been the most preferred commodity in Mantangai and throughout most of Kalimantan. The term *komoditi* (commodity) is also popular in the community.

Rubber as a commodity is a strong driver of the individuation of land in Mantangai. Agricultural land planted to rice twice or more a year, depending on its fertility, will be converted into a rubber garden. And all rubber gardens in Mantangai are under the individual (household) ownership of community members. Some of these gardens even have formal land titles.

The expansion of oil palm cultivation also drives individual land ownership within indigenous communities. Where oil palm plantation companies use the model of *inti* and *plasma* (nucleus and smallholder estates, respectively), local and indigenous communities cede land to the company, part of which is returned to community members with a credit package for oil palm cultivation as well as a promised individual land title after repayment of the loan (Colchester et al. 2006). Plantation companies try to convince local landholders of the wealth this commodity can bring. When the author carried out training workshops on free, prior, and informed consent in the area in 2009 and 2010, some of the interviewed community members said that they had become oil palm smallholders because of the promise of profit.

The penetration of market forces can also be seen in the growing number of motorbikes owned by community members in the last five

years. Almost every household in Mantangai Hulu village now has a motorbike, bought on easy credit terms. To make the down payment, they offer their SKT to the bank as collateral, or they pay in cash if they can manage that, or they sell a piece of land they own. For the monthly installment, they use the money they earn from selling rubber resin. Along with this market penetration, there is a growing number of shops selling fuel and new and second-hand gadgets, and shops servicing mobile phone billing.

Globalization in Communication

Most community members of Mantangai Hulu village own mobile phones and some are familiar with the Internet. Community members can now follow local, national, regional, and global situations in real time. Some use the Internet to share the situation in the field with the world at large, including NGOs in Jakarta and in the provincial capital, Palangkaraya. Some are regular contributors to the website of local NGOs, such as the website of Perhimpunan Kelompok Kerja Sistem Hutan Kerakyatan, a Palangkaraya-based NGO that works on participatory mapping and the development of information for communities. A farmer's union in Mantangai Hulu has a rubber-based cooperative that uses the Internet to search for market prices and market demand for commodities and informs the members of the cooperative. It also uses WhatsApp, BlackBerry Messenger, and other kinds of social media.

This paper suggests that globalization in communication has been an additional trigger of the individuation process in the community. It allows community members to get information based on individual preference and to act individually based on that information. For instance, the members of the cooperative can use the new media to seek their individually preferred options given the opportunities and challenges the market provides.

CONCLUSION: PRESSURES FOR INDIVIDUAL LAND RIGHTS CHALLENGE THE RECOGNITION OF INDIGENOUS COMMUNITIES

There is a discussion among NGOs, academics, and state officials in Indonesia on the possibility of awarding indigenous communities communal title over adat land. But this is just a discourse as yet. In the meantime, we can see how these communities are driven into the practice of individual land titling.

Without official recognition by the state, these communities are under the influence of five big forces that push community members in the direction of individual land titling. These forces are:

1. Provincial state laws and regulations that enable individual land titling of adat land while constraining collective claims on adat territory
2. Local dynamics of mega investment projects that gain state-supported control of indigenous territory and leave little room for collective indigenous counterclaims
3. Internal dynamics in the communities, with community members perceiving the NGO discourse of communal customary land rights as a strategic first step to eventually acquire individual land rights
4. The market promise of individual profit, with individual community members planting the commercial tree-crops of rubber and oil palm, which activates their individual claims on that land
5. Globalization in communication that increases opportunities for individual cash-crop farming.

These forces find a “natural trait” inherent in every human person: individual preference, by which an individual person decides which option he or she will follow.

This account of the situation of Mantangai suggests how community members have followed the tracks that these big forces created—and how this is leading to a growing trend of individuation of land ownership. Clearly, further and deeper research is needed to gain more reliable data on this trend. But for the time being it can be hypothesized that, for indigenous communities in places like Mantangai, this trend of individuation may undermine their chances of gaining state recognition as “indigenous communities,” as they are losing key characteristics required by state law. It may not be their fault—if it is a fault—because they are under the influence of forces that they can only withstand if they would, in turn, gain the recognition of their existence by the state. ❁

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NOTES

1. Recent data from the National Bureau of Statistics show that the population of Indonesia has grown to around 250 million, but there is no updated data regarding the number of people who make their living from state forest areas.
2. As part of the joint work between Forest Peoples Programme and Pusaka in promoting indigenous people’s rights in Indonesia, the team and I monitored the implications of the REDD and REDD+ programs on indigenous people’s rights, particularly the planning and implementation of the program’s demonstration activity projects. Our specific task was to monitor the impact of the KFCP on indigenous people in an area that used to be the site of the Mega Rice Project. One of the communities in the area is Mantangai Hulu. Even after this monitoring project (2009–2012), we continued the work of defending indigenous people’s rights in Kapuas, Central Kalimantan. In this program, we provided training on indigenous rights, with a particular focus on the process of free, prior, and informed consent for indigenous communities, NGOs, and local government officials. We obtained the data on the KFCP working area and communities from the KFCP (2009), local NGOs such as Perhimpunan Kelompok Kerja Sistem Hutan Kerakyatan, and Central Kalimantan Government Office.
3. I have adopted the term from its original form “people governed by custom” used in Colchester et al. (2006, 11).
4. See for example three references in which authors use the term “adat law”: Barnes, Gray, and Kingsbury (1995); Davidson and Henley (2007); and von Benda-Beckmann, von Benda-Beckman, and Griffiths (2009).
5. The villages were Mantangai Hulu, Mantangai Tengah, Mantangai Hilir, Katunjung, Kalumpang, Sei Ahas, Kalumpang, Tumbang Muroi and Lamunti.
6. Data from the National Bureau of Statistics of Kapuas District (2013).

7. Personal discussion with Mantangai Hulu villagers in 2012.
8. For example, Law 41/1999 on Forestry, Law 39/2014 on Plantation, and Law 6 on Village (Desa).
9. Provincial Regulation 16/2008, renewed with Provincial Regulation 1/2010.
10. Governor Decree 13/2009, renewed with Decree 4/2012.
11. “Collective rights” refers to an aggregation of individual rights, while “communal rights” refers to a right by “a community as an entity, a unit, or a body” which is not an aggregation of individual rights. For an explanation of the difference between collective and communal right, see for example Van Vollenhoven Institute, Leiden University and BAPPENAS (2010, 17).

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