

RESEARCH REPORT

# The Governance of Indonesian Overseas Employment in the Context of Decentralization

Palmira Permata Bachtiar

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Editor: Budhi Adrianto

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Finally, we hope that the study can shed some light on the overall policy and institutional framework of Indonesian overseas employment governance. Information in this study can serve as inputs for the improvement of the governance which can eventually benefit the migrant workers.

# ABSTRACT

## The Governance of Indonesian Overseas Employment in the Context of Decentralization

Palmira Permata Bachtiar

This study looks at emigration governance in the context of decentralized Indonesia. It examines various local initiatives that have evolved following the onset of decentralization in Indonesia a decade ago. These initiatives materialize in the form of *perda* (local regulations). In this study, first, a literature review is performed particularly to address the issue of *perda* related to overseas employment. Prior to the mapping analysis, a typology of four possible types of *perda* is constructed. Out of the 127 collected *perda*, 81% fall in type-1 *perda* (*perda* on general employment, which are extractive); 14.2% fall in type-2 *perda* (*perda* on general *kabupaten* (district) revenues, which are extractive); 2.4% fall in type-3 *perda* (*perda* on placement procedure, which are nonextractive); and 2.4% fall in type-4 *perda* (*perda* on migrant workers' protection, which are nonextractive). The study finds that migrant-source *kabupaten* issue both higher numbers and varieties of *perda* related to overseas employment with type-1 and type-2 *perda* being the majority, while only three *kabupaten* (3.7% of 82 *kabupaten*) issue type-4 *perda*. Interestingly, our typology is not necessarily mutually exclusive, as *kabupaten* that pass protection *perda* do pass extractive *perda* as well.

Second, fieldwork is conducted in four migrant-source *kabupaten* which have received technical assistance from donor agencies to formulate protection *perda*. In order to understand why Kabupaten Blitar and Kabupaten Lombok Barat were able to pass protection *perda*, while Kabupaten Ponorogo and Kabupaten Lombok Tengah could not, the study looks at the internal factors: stakeholders and the relationships between them; and the external factors which are beyond the control of the stakeholders. Our field study shows that the policy process in each *kabupaten* is unique and cannot be explained in a standard model. The duration of the policy process, substance of the *perda*, position of the advocating nongovernmental organizations (NGOs), intervention of private recruitment agencies (PPTKIS), and the timing of election are factors that influence the policy process outcomes, which are different in each *kabupaten*. Other factors such as the trust and commitment of the local government and parliament, strong capacity of NGOs, and strong support of donors also positively influence the success of the process.

Keywords: overseas migration, governance, decentralization

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## LIST OF ABBREVIATIONS

APBD	:	local budget
Bappeda	:	Local Development Planning Agency
BLK-LN	:	training center for overseas employment
BNP2TKI	:	National Agency for the Placement and Protection of Indonesian Migrant Workers
BP3TKI	:	Service Center on the Placement and Protection of Indonesian Migrant Workers
BPS	:	Statistics Indonesia
FGD	:	focus group discussion
JKPS	:	Social Protection Labor Network
JPIP	:	Jawa Post Institute of Pro-Otonomi
<i>kepmakertrans</i>	:	labor and transmigration ministerial decree
KTKLN	:	overseas worker ID card
LBH-APIK	:	Legal Aid Institute-Association of Indonesian Women for Justice
MoF	:	Ministry of Finance
MoHA	:	Ministry of Home Affairs
MoLT	:	Ministry of Labor and Transmigration
NGO	:	nongovernmental organization
NTB	:	West Nusa Tenggara
OSS	:	one-stop service
P3BM	:	Association for the Care of Women and Migrant Workers
PAP	:	final pre-departure briefing
PPK	:	Association of Five Ideas
PDRD	:	Local Taxes and <i>Retribusi</i>
<i>perda</i>	:	local regulation
<i>permenakertrans</i>	:	labor and transmigration ministerial regulation
<i>pilkada</i>	:	<i>kabupaten/ kota</i> executive election
Podes	:	Village Potential Census
PPTKIS	:	private recruitment agency
<i>prolegda</i>	:	local legislation program
PUSAR	:	Center for the Study of Advocacy for the People
<i>raiperda</i>	:	<i>perda</i> bill
SBMB	:	Blitar Migrant Workers' Association
SIP	:	mobilization permit
SIPPTKIS	:	PPTKIS license
SISKO TKLN	:	computerized data system of overseas employment
SIUP	:	trading license
UNIFEM	:	United Nations Development Fund for Women
UPT P3TKI	:	Technical Working Unit of Placement and Protection Service for Indonesian Migrant Workers



# EXECUTIVE SUMMARY

## Background

Considering the magnitude of the Indonesian workers' outflow, the task of governing international migration is too huge for the central government to handle alone. Low-skilled female migrant workers make up no less than three quarters of the emigration profile. Adding to the complexity of working overseas are the human rights issues that emerge alongside the massive outflow of these workers employed in the domestic sphere and with the absence of bilateral agreements with some receiving countries.

Decentralized governance of emigration is justified for several reasons. The head of the National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) (2009) admitted that 80% of the problems facing the migrant workers occur domestically. Big problems such as identity fraud, cheat, extortion, detention, etc. happen at the local level and can be more effectively handled by the local government. Moreover, one of the tangible gains of emigration is the remittance whose impact is more influential at the local level than at the national level. At the same time, the pain of emigration is also more significantly experienced locally. It is, therefore, in the best interest of the local government to pursue good emigration governance to maximize the advantages and minimize the disadvantages of emigration.

Unfortunately, the governance of Indonesia's overseas employment is characterized by a centralized approach. The ones in favor of the centralized approach argue that domestic employment is decentralizable, while overseas employment is not. This is so because these two types of employment are regulated by two different laws: Law No. 13/2003 on Labor and Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers. Moreover, the establishment of BNP2TKI as a vertical body operating the placement and protection of migrant workers reinforces the position of the central government in that the governance of overseas employment is more of a centralized matter. Moreover, Law No. 39/2004 is never clear about the relationship between the Service Center on the Placement and Protection of Indonesian Migrant Workers (BP3TKI) and the provincial and *kabupaten* (district)/*kota* (city) governments. Furthermore, Article 10 of Law No. 39/2004 authorizes the placement of Indonesian migrant workers to private recruitment agencies (PPTKIS) and Article 82 states that the preplacement protection is the responsibility of the PPTKIS, while in fact 90% of the PPTKIS are located in Jakarta. According to Law No. 39/2004 and Government Regulation No. 38/2007 on the Division of Government Affairs between National and Subnational Governments, the responsibilities of issuing PPTKIS' permit and licensing all lie in the hands of the central government.

## Research Questions and Methodology

The research poses the following questions:

- a) What justifies the initiative to formulate a *perda* (local regulation) on the protection of migrant workers at the *kabupaten/kota* level?
- b) What kinds of *perda* related to overseas employment have local governments issued so far?
- c) Is there any correlation between the number of *perda* related to overseas employment issued and the number of migrant workers?

- d) If *kabupaten/kota* are given technical assistance by donor agencies through nongovernmental organizations (NGOs) to formulate a protection *perda*, would they choose to legislate it? What are the enabling conditions under which *kabupaten/kota* are able to pass a protection *perda*?

The research design follows these stages:

- a) **Analysis of national and local policy frameworks.** The research started with a literature review on a series of national laws and regulations to get the overall picture of international migration governance in Indonesia. An assessment was also made on the extent to which decentralization had triggered initiatives of local governments to improve public services.
- b) **Construction of typology of *perda* related to overseas employment at the local level.** To give the idea that there are various types of *perda*, we mapped and classified *perda* related to overseas employment based on their characteristics. Since there was no single source from which the official and valid list of *perda* in all *kabupaten/kota* could be extracted, the best approach was to find the data from various online sources. Furthermore, the number of migrant workers in each *kabupaten/kota* was aggregated from the 2005 Village Potential Census (Podes). For simplification, the number of migrant workers was divided into five quintiles.
- c) **Benchmarking study in four *kabupaten/kota*.** Blitar, Ponorogo, Lombok Barat, and Lombok Tengah were four migrant-source *kabupaten* receiving assistance from donor agencies to formulate protection *perda*. However, only Blitar and Lombok Barat now have a protection *perda*. The fieldwork involved consultation with stakeholders at the *kabupaten/kota* level. Furthermore, two focus group discussions (FGDs) were conducted at the village level with prospective or former migrant workers, or their families: one for the men's group and one for the women's group. Additionally, in-depth interviews were conducted with village and *kecamatan* (subdistrict) officials who were in charge of supporting prospective migrant workers in fulfilling their administration requirements. In-depth interviews were also carried out with the PPTKIS and migrant workers experiencing abuse—either prior to departure, during work, or upon arrival. Finally, one more FGD was carried out at the *kabupaten* level during which the initial findings were presented. At this stage, local government officials, PPTKIS, and migrant worker associations were again invited to give their comments and feedback. While this served as triangulation to confirm the initial findings, the research team made the best use of the presence of these stakeholders to communicate the hopes and aspirations of the migrant workers to them so as to initiate further policy engagement in protecting migrant workers.

## Main Findings

### 1. Responsibilities of the local government in Law No. 39/2004

Law No. 39/2004 has been strongly criticized for its bias towards the placement—rather than the protection—of migrant workers. Out of the 109 articles of the law, only one chapter of 8 articles (Articles 77–84) deals with the issue of protection. Although Article 77 of the law defines protection as preplacement, placement, and postplacement protection, the rest of the provisions basically perceive protection in terms of the placement period overseas (see Articles 78–81) and obligate the workers to pay for the assistance and protection program (see Articles 83–84). In terms of preplacement protection, the law assigns the PPTKIS to be the agency in charge (Article 82), while the postplacement protection remains unregulated.

The preplacement protection against extortion and exploitation has not been well elaborated by Law No. 39/2004. Article 39 instructs the PPTKIS to bear all costs unless stated otherwise. However, according to Permenakertrans<sup>1</sup> No. PER.14/MEN/X/2010, chargeable costs to the workers include the costs of (i) visa, (ii) food and accommodation during training, (iii) airfares, (iv) airport tax, (v) local transportation to the training center/shelter, (vi) insurance premium, and, last but not least, (vi) agency service. Indeed, no one can guarantee that the PPTKIS will not overcharge the migrant workers, unless there exist effective supervision by and proper sanctions from the government.

Unfortunately, clear provisions for the supervision of the PPTKIS have been particularly missing in Law No. 39/2004. First, the law is inconclusive about the institutions in charge of supervision roles. Article 92(1) states that the government at all levels, including the local government, is responsible for the supervision, while Article 95 states that BNP2TKI is the institution in charge. Meanwhile, the delineation of authority between the government at all levels and BNP2TKI is far from clear. It also triggers the question whether the supervision fund is also shared with *kabupaten/kota* where BNP2TKI has no representative, except the small service posts in only 14 *kabupaten/kota*. Second, further elaboration of the provisions for the supervision and supervision mechanisms in the implementing legislation—as promised by Articles 92(3) and 93 of the law—is yet to be completed. Many years have passed since the enactment of the law, but the promise has not been materialized yet. Third, the supervision becomes more difficult to carry out at the *kabupaten/kota* level because Article 23 states that the headquarters of the PPTKIS—mostly located in Jakarta—are the ones bearing the responsibilities of the branch office.

## **2. Intergovernmental responsibilities in Government Regulation No. 38/2007**

The central government dominates the major responsibilities outlined by Government Regulation No. 38/2007. Unfortunately, these responsibilities are more related to the placement procedure such as (i) issuing PPTKIS licenses (SIPPTKIS), (ii) giving recruitment recommendations, (iii) issuing mobilization permits (SIP), and (iv) appointing insurance companies, banks, and medical clinics. Related to the migrant workers, the responsibilities of the central government include (i) issuing overseas worker ID cards (KTKLN), (ii) constructing a computerized data system of overseas employment (SISKO TKLN), and (iii) carrying out final pre-departure briefings (PAP). Power struggle between the Ministry of Labor and Transmigration (MoLT) and BNP2TKI takes place in relation with these responsibilities. It is important to note that Government Regulation No. 38/2007 takes protection fee (of US\$15/worker) seriously, as the supervision of protection fee compliance takes place at all levels, even at the *kabupaten/kota* level. However, in reality, the local government has nothing to do with it and cannot access its data.

Meanwhile, the local government is assigned with many more responsibilities by Government Regulation No. 38/2007. Adding to the original responsibilities mandated by Law No. 39/2004, Government Regulation No. 38/2007 inserts some more responsibilities that used to be the tasks of the PPTKIS under Law No. 39/2004 and some other responsibilities to support the central government's duties.

Altogether, Government Regulation No. 38/2007 outlines thirteen responsibilities of the local government which include (i) information dissemination, (ii) registration of workers, (iii) selection of workers, (iv) supervision of recruitment, (v) facilitation of bilateral and multilateral

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<sup>1</sup>Labor and Transmigration Ministerial Regulation.

agreement implementation, (vi) issuance of the permit to establish a PPTKIS branch office, (vii) recommendation of workers' passport, (viii) dissemination of information on SSKO TKLN and supervision of the protection fee compliance, (ix) socialization of the contents of placement and work contracts, (x) assessment and validation of the placement contract, (xi) assistance, supervision, and monitoring of the placement and protection of migrant workers, (xii) permit, and (xiii) homecoming service.

It is good that the local governments are more intensively involved in emigration governance. Further questions to answer are whether the local governments are aware of and committed to these extended tasks and whether they are capable of performing them.

### **3. Policy gap and protection *perda***

Local initiatives in the form of the passing of protection *perda* are strongly needed for the protection of migrant workers, particularly during preplacement. Protection *perda* is needed for the following reasons. First, a *perda* can elaborate and specify a local government's roles and responsibilities in line with the mandates of Law No. 39/2004 and Government Regulation No. 38/2007.

Second, a *perda* can state the specific needs of a *kabupaten/kota* which cannot be accommodated by Law No. 39/2004. Such issues as main destinations and cost structures are locally specific and, therefore, can only be accommodated by a *perda*. For example, the majority of migrant workers from Lombok Barat and Lombok Tengah work in Malaysia and the Middle East, while their fellow migrant workers from Blitar and Ponorogo are employed in one of the East Asian countries. With such locally specific conditions, the *perda* of these *kabupaten* can specifically stipulate the cost structure in the destination country where their migrant workers work.

Third, the process of drafting a protection *perda* involves civil society organizations and, therefore, enhances democratization. The participation of NGOs and academics in the process reveals one step towards improvement in governance. From a policy perspective, more interactions between civil society organizations, the local government, the local parliament, and the private sector will result in a better power balance.

Fourth, a *perda* can clearly stipulate sanctions against violations which take place at the *kabupaten/kota* level. A *perda* can act as a form of shock therapy for any party that is accustomed to extorting, abusing, and detaining migrant workers prior to their departure. With strong law enforcement, the protection of migrant workers will certainly improve.

Some parties are pessimistic, however, that a protection *perda* can effectively serve its purpose because, empirically speaking, its implementation and law enforcement have been far from sufficient. The question is now whether we should still establish a normative law whose implementation and enforcement are very slow or cling to the evidence and abandon the idea of having a *perda*. Based on results of interviews and FGDs with key stakeholders, the establishment of protection *perda* is urgent for the sending *kabupaten/kota*. The ultimate desire for establishing a protection *perda* is for the *perda* to serve as a guide for civil society behaviors and attitudes that respect migrant workers' rights. The passing of a protection *perda* should go hand in hand with public pressure for effective implementation.

#### 4. Typology and mapping analysis of *perda* related to overseas employment

We constructed a typology of two general types of *perda* related to overseas employment: nonspecific (extractive) and specific (nonextractive) *perda*. For the specific ones, the *perda* can be grouped into four types of *perda*: type-1, type-2, type-3, and type-4 *perda*.

Type-1 *perda* focus on charges for general employment, including overseas employment. These charges are paid either by the worker or the company. Type-2 *perda* are about general *kabupaten/kota* revenues, including those from overseas employment. They are formulated more generally than type-1 *perda*, and therefore, their charges are paid by even larger groups of people. Type-3 *perda* deal with the procedure for the placement of overseas workers. It does not rule any financial consequences to be borne either by the migrant worker or the PPTKIS. In some cases, the title of the *perda* explicitly mentions the protection of migrant workers, while the content regulates the placement procedure heavily; therefore, this type is categorized separately from type-4 *perda*. Type-4 *perda* are concerned with the protection of migrant workers. It does not entail any charge and concentrates on what has not been ruled in the national law. These protection *perda* mandates the establishment of a protection commission: a specialized body which expedites the handling of abuse and extortion cases, mediates between various stakeholders, and issues warnings when violations of migrant workers' rights occur.

In the mapping analysis, we found the following. First, in general, there exists a correlation between *kabupaten/kota* having *perda* related to overseas employment and *kabupaten/kota* having a large number of migrant workers. Second, surprisingly, many *kabupaten/kota* which have few migrant workers (quintiles 1 to 3) pass type-1 and type-2 *perda*. These *kabupaten/kota* are located close to the borders with Malaysia and Brunei and have become migrant workers' transit areas. Moreover, type-1 and type-2 *perda* are also applicable to *kabupaten/kota* with domestic migrant workers from whom the local governments are also eager to levy. Because of these features, type-1 and type-2 *perda* tend to spread in all *kabupaten/kota* regardless of their number of migrant workers. Third, out of the 127 *perda*, a majority of 81.1% and 14.2% fall in type-1 and type-2 *perda* respectively, while only 2.4% are type-4 *perda*. Moreover, out of the 82 migrant-source *kabupaten/kota* only 3 *kabupaten/kota* (3.7%) have a protection *perda*, while 34 *kabupaten/kota* (41.5%) are more interested in passing extractive *perda*. Therefore, the awareness of the local governments to take the initiative to protect their migrant workers is still far from adequate. Fourth, this typology we have made is not necessarily mutually exclusive. Having the ultimate protection *perda* does not necessarily mean not having extractive *perda*. Apparently, *kabupaten/kota* that pass protection *perda* do not cancel their extractive *perda*. Therefore, the *kabupaten/kota* may protect their migrant workers but, at the same time, violate the law by taxing the workers, directly or indirectly.

#### 5. Policy process of a protection *perda* and its enabling conditions

Our field research shows that each case of policy process is unique. It is so unique that the outcome cannot be explained in a standard model that applies for each observed *kabupaten*. The duration of the policy process that was too short for Ponorogo or too long for Blitar was apparently poor. However, the optimal duration for Lombok Barat did not apply for Lombok Tengah. The fact that Lombok Barat *perda* used Law No. 39/2004 as its substance was the reason for its rejection in Lombok Tengah. However, the substance of the *perda* in Blitar that was innovative was also the reason why the local government and PPTKIS were resistant to it. Furthermore, taking the position of policy contestation for NGOs turned to be successful in Blitar, but not in Ponorogo. In the case of Lombok Barat, the position of policy engagement proved to be more effective for NGOs, although this was not the case for Lombok Tengah.

The intervention of the PPTKIS could be counterbalanced by the high commitment of the parliament. In Ponorogo, the PPTKIS had a close relation with members of the parliament who blocked the inclusion of the *raperda* (*perda* bill) in the *prolegda* (local legislation program). In West Nusa Tenggara (NTB) Province, the PPTKIS was not aware of the *raperda*. With this favorable context, the *perda* in Lombok Barat succeeded to be legislated, but not in Lombok Tengah. The timing of elections in Blitar and Lombok Barat turned to be advantageous in the approval of the *perda*. In the cases of Ponorogo and Lombok Tengah, the timing was not favorable. However, the timing of an election can also be detrimental in the implementation of a *perda*. In Lombok Barat, the legislated *perda* had to wait until the election events were over.

Apart from the abovementioned factors, we found that (i) the trust and commitment of the local government and parliament, (ii) the strong capacity of NGOs, and (iii) the strong support of donor agencies are common factors that positively influence the success of *perda* legislation. The commitment of the local governments, in particular, is essential in the implementation phase. Therefore, engaging them from the onset is key to the effective execution of the mandate of the *perda*. At the same time, the frequent transfers of government staff without fit and proper considerations are damaging to the delivery of public services, including that in the protection of migrant workers. Finally, the strong support of donor agencies is equally essential since local NGOs alone would not be able to encourage the local governments to protect the migrant workers.

## Recommendations

1. Revision of Law No. 39/2004 is a must in order to make the local governments' roles in the protection of migrant workers more effective. The revised law should clearly stipulate the local governments' roles in the aspects of supervision (Article 92) and supervisory mechanism (Article 93). Furthermore, the authority of the local government in protecting migrant workers can only be enhanced if Article 23 of the law is deleted. With this, the local government can then impose sanctions on the branch office of PPTKIS in breach of the law and regulation.
2. *Perda* on *retribusi*<sup>ii</sup> that charge migrant workers should be annulled. *Perda* on *retribusi* that excessively charge the PPTKIS should also be reviewed, as the PPTKIS will eventually transfer the costs to the migrant workers. It is the responsibility of the local government to provide regular services to the workers free of charge as a reflection of its accountability to its citizens.
3. The migrant-source *kabupaten* should regularly be updated with the most recent legal framework. This is particularly important, as the central government has been changing policies and regulations very frequently. One should not assume that the local governments will automatically be aware of the policy changes at the national level without proper socialization.
4. Enormous tasks for the local governments as outlined by both Law No. 39/2004 and Government Regulation No. 38/2007 should consequently increase the budget allocated to migrant-source *kabupaten*. At the same time, these areas—through their migrant workers—have long paid US\$15/worker to the central government for the so-called assistance and protection program. If the local governments are to help improve the protection of migrant workers during the recruitment phase, it is more than justified if the central government adds its financial support to the local governments. Also, it is only fair if the

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<sup>ii</sup>*Retribusi* is officially a user charge that is collected as payment in return for a service. However, in practice, it includes other nontax charges collected by the government.

US\$15 fund per worker is channeled back to its origin, namely the migrant-source *kabupaten*, to develop a sustainable protection mechanism and help reduce 80% of all the upstream problems. This is particularly applicable in the case of a *kabupaten* with a protection *perda*.

5. Lombok Barat, along with its protection commission, can serve as a good model. However, prior to its replication in other migrant-source *kabupaten*, the model needs to be tested first. The protection commission itself is an ad hoc body whose expertise in the long run has to be transferred to the labor and transmigration agency. In this regard, SMERU recommends a pilot project supporting the protection commission by means of the Specific Allocation Fund (DAK) and/or the Deconcentration Fund (*Dana Dekon*). To start with, Lombok Barat can be the pilot area.

# I. INTRODUCTION

## 1.1 Background

The governance of international migration in the context of decentralization is somewhat a dilemma. Debate occurs particularly on the issue of whether it is a decentralized or centralized matter. It is debatable because overseas employment lies both in the areas of employment and foreign affairs. Law No. 32/2004 on Regional Governance stipulates that employment is a decentralized matter, while foreign affairs are not.

The governance of Indonesia's overseas employment is in fact characterized by a centralized approach. One can obviously see it from the following angles. First, the ones in favor of the centralized governance usually make use of Articles 33 and 34 of Law No. 13/2003 on Labor (Naekma and Pageh, 2009). These articles differentiate domestic employment from the overseas employment, leaving the latter to be regulated by another law, which is Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers. Based on these provisions, these people then argue that domestic employment is decentralizable, while overseas employment is not.

Second, the establishment of a vertical body as the operator of the placement and protection of migrant workers reinforces the position of the central government in that the governance of overseas employment is more of a centralized matter.<sup>1</sup> The National Agency for the Placement and Protection of Indonesian Migrant Workers (BNP2TKI) has representative offices called BP3TKI (Service Centers on the Placement and Protection of Indonesian Migrant Workers) in 19 migrant-source provinces. It has no representative at the *kabupaten* (district)/*kota* (city) level, except the small service posts in 14 selected *kabupaten/kota* (BNP2TKI, 2011).<sup>2</sup> Moreover, Law No. 39/2004 is never clear about the relationship between BP3TKI and the provincial and *kabupaten/kota* governments.

Third, Article 10 of Law No. 39/2004 authorizes the placement of Indonesian migrant workers to private recruitment agencies (PPTKIS) and Article 82 states that the preplacement protection is the responsibility of the PPTKIS.<sup>3</sup> Meanwhile, 90% of the PPTKIS are located in Jakarta. According to Law No. 39/2004 and Government Regulation No. 38/2007 (see Table A1 of Appendix 1), the responsibilities of issuing PPTKIS' permit and licensing all lie in the hands of the central government.

On the other hand, the decentralized governance of emigration is justified for several reasons. First, BNP2TKI (2009) admitted that 80% of the problems facing the migrant workers occur domestically. Serious problems such as identity fraud, cheat, extortion, and detention happen at the local level and can actually be more effectively handled by the local government.

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<sup>1</sup>BNP2TKI is one of the mandates of Law No. 39/2004. It was established in 2007 with Presidential Regulation No. 81/2006 on National Agency for the Placement and Protection of Indonesian Migrant Workers.

<sup>2</sup>These small offices are called Service Posts on the Placement and Protection of Indonesian Migrant Workers (P4TKI).

<sup>3</sup>About 90% of the total annual placements are the ones organized by the PPTKIS under the Private-to-Private contract arrangement. The rest are organized by BNP2TKI under the Government-to-Government contract arrangement.



Second, one of the tangible gains of emigration is the remittance whose impact is more influential at the local level than at the national level. At the same time, the pain of emigration is also more significantly experienced locally. It is, therefore, in the best interest of the local governments to pursue good emigration governance to maximize the advantages and minimize the disadvantages of emigration.

## 1.2 Research Objectives and Questions

The research combines literature review and fieldwork with the following objectives:

- a) To analyze the nature of the decentralization of emigration governance;
- b) To construct a typology of various *perda* (local regulations) related to overseas employment that are the initiatives of *kabupaten/kota*;
- c) To conduct a mapping analysis of *perda* related to overseas employment; and
- d) To assess the enabling conditions under which some *kabupaten/kota* are able to pass protection *perda* for their migrant workers.

Specifically, the research poses the following questions:

- a) What justifies the initiative to formulate *perda* on the protection of migrant workers at the *kabupaten/kota* level?
- b) What kinds of *perda* related to overseas employment have the local governments issued so far?
- c) Is there any correlation between the number of *perda*-related overseas employment issued and the number of migrant workers?
- d) If *kabupaten/kota* are given technical assistance by donor agencies through nongovernmental organizations (NGOs) to formulate a protection *perda*, would they choose to legislate it? What are the enabling conditions under which *kabupaten/kota* are able to pass a protection *perda*?

## 1.3 Research Methodology

### 1.3.1 National and Local Policy Frameworks

The research started with a document and literature review on policy frameworks. In this phase, a series of national laws and regulations were assessed to get the overall picture of international migration governance. Focus was given particularly to the nature of authority transfer of migration governance from the central government to the local government, if one existed. An assessment was made on the extent of decentralization in Indonesia. The law on regional governance as well as Law No. 39/2004, along with their implementing legislation, were thoroughly studied.

### 1.3.2 Typology of *Perda* Related to Overseas Employment at the Local Level

To give the idea that there are various types of *perda* related to overseas employment at the *kabupaten/kota* level, the research team mapped and classified the *perda* based on their characteristics. At the national level, however, there was no single source from which the official and valid list of *perda* in all *kabupaten/kota* was made available. Therefore, the best

approach was to find the data from various online sources, comprising Gudang Hukum Indonesia<sup>4</sup>, KPPOD<sup>5</sup>, Legalitas.Org<sup>6</sup>.

The team was interested in finding out whether *kabupaten/kota* with a bigger size of migrant workers also issued a higher number of *perda* related to overseas employment. The number of migrant workers in each *kabupaten/kota* was aggregated from the 2005 Village Potential Census (Podes).<sup>7</sup> For simplification, the number of migrant workers was divided into five quintiles.

### 1.3.3 Fieldwork

The fieldwork was conducted in four *kabupaten* to examine the policy process behind the existence or nonexistence of *perda* focusing on migrant protection. The migrant-source *kabupaten* were chosen purposively to include two *kabupaten* with a protection *perda* and two *kabupaten* without it. East Java and West Nusa Tenggara (NTB) were picked out, as both are provinces where most migrant workers originate. Blitar (East Java) and Lombok Barat (NTB) are *kabupaten* with a protection *perda*. Their neighboring *kabupaten*, Ponorogo (East Java) and Lombok Tengah (NTB) are *kabupaten* without a protection *perda*, although both already had the bill version of the protection *perda*. Indeed, all four *kabupaten*—through several advocating NGOs—received technical assistance from donor agencies to formulate a protection *perda*.

However, implementation problems of the protection *perda* in Blitar and Lombok Barat had inhibited the observation of the impact of the *perda* on the protection of migrant workers. The dispute between stakeholders in Blitar, in particular between the advocating NGOs and the local government, hampered the process of recording Perda No. 16/2008 in the *kabupaten* legislation book. A solution to the difference of opinions resulted in the *perda* being revised. Meanwhile, Perda No. 5/2008 of Lombok Barat had been implemented slowly owing to the general elections as well as the *kabupaten* executive and legislative elections. The protection commission was only inaugurated by the *bupati* (*kabupaten* head) at the time of the fieldwork. For this reason, the fieldwork only observed the local reform on paper rather than in practice.

The initial part of the fieldwork involved consultations with local government officials, local NGOs, migrant workers' associations, and the PPTKIS. In this part, perspectives regarding key issues in the area of international migration were explored. Meanwhile, migrant workers' statistics from Statistics Indonesia (BPS) at the *kabupaten* level and from the BP3TKI were also collected for further reference.

At the village level, prospective migrant workers, former migrant workers, or their families were invited to focus group discussions (FGDs) to discuss the emigration issues they had encountered. These village-level FGDs were segregated by gender: one for men and one for women. Additionally, in-depth interviews were held with village and *kecamatan* (subdistrict) officials in charge of administrative requirements for prospective migrant workers. In-depth interviews were also carried out with the PPTKIS and migrant workers experiencing abuse—either prior to departure, during work, or upon arrival in Indonesia.

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<sup>4</sup><http://gudanghukumindonesia.blogspot.com/>.

<sup>5</sup><http://www.kppod.org/>.

<sup>6</sup><http://www.legalitas.org/>.

<sup>7</sup>The 2005 Podes involved not less than 75,000 villages.

The initial findings from the consultations with stakeholders and village-level FGDs were then presented in the *kabupaten*-level FGDs. At this stage, local government officials, the PPTKIS, and migrant workers' associations were invited again to give their comments and feedback. While this served as triangulation to confirm the initial findings, the research team made the best use of their presence by presenting the hopes and aspirations of migrant workers and initiating further policy engagement in protecting migrant workers. Thus, in total, the fieldwork in the four *kabupaten* involved 12 FGDs (two with migrant workers and one with *kabupaten*-level stakeholders for each *kabupaten*).

## 1.4 Limitations of the Research

First of all, the fast growth phenomenon of *perda* after decentralization is not typical to the *kabupaten/kota* level. At the provincial level, there are many *perda* that are passed by the provincial parliament. However, since the scope of the study is limited to the *kabupaten/kota* level, we will not discuss *perda* at the provincial level.

Second, the research had been limited by access to the official copy of *perda*. Therefore, the only proxy was the reported list of *perda* related to overseas employment available online. The list includes the legislation number of the *perda* and their title. Sometimes online sources provide the copy of the *perda*, but, most of the time, only the number and the title (see Table A3 of Appendix 1). This means that the list of 127 *perda* makes up only some parts of the hundreds of *perda* out there that the research team could not extract. Our findings, then, only indicate the characteristics of the reported *perda*. Furthermore, the current status of these online *perda* is not regularly updated. However, since our purpose is only to map and classify all ever-made *perda* related to overseas employment, the current status becomes of less importance.

Third, the research did not observe the implementation of the *perda* since it was conducted not long after the establishment of the *perda*, while the implementation phase took place very slowly. Therefore, in the case of Blitar and Lombok Barat, the research only focused on their textual analysis. This exercise was considered to be important as the rationale behind the passing of protection *perda* as well as the lessons learned for other migrant-source *kabupaten/kota* wishing to prepare their protection *perda*.

## 1.5 Structure of the Report

Chapter 1 presents background information which is the basic arguments of centralized versus decentralized emigration governance. It also briefly states methodological issues, such as the research objectives and questions, the research design, and the limitation of the research. Chapter 2 discusses more detailed information on the local governments' roles and responsibilities according to Law No. 39/2004 and Government Regulation No. 38/2007. In Chapter 3, the research team constructs a typology of varieties of *perda* related to overseas employment. Here, it conducts the mapping analysis and draws some interesting results. Furthermore, it discusses the findings of the fieldwork in Chapter 4. Specifically, it conducts a textual analysis of the *perda* of Blitar and Lombok Barat and elaborates the legal drafting process before drawing some lessons on the enabling conditions under which the *perda* of both *kabupaten* could be passed.

## II. NATIONAL REGULATORY FRAMEWORK

This chapter basically reviews Law No. 39/2004. Focus is particularly given to one of its weaknesses, its delineation of authority problem. The chapter starts with the review of weaknesses in the law. The problem of intergovernmental relationship in Government Regulation No. 38/2007 is also overviewed. Furthermore, a lack of delineation of authority at the central level triggers dualism and power struggle between the Ministry of Labor and Transmigration (MoLT) and BNP2TKI. Since this study's primary concerns lie with the *kabupaten/kota* government, the discussion will only cover problems at the *kabupaten/kota* level. Further subchapters are about the missing elements of Law No. 39/2004, which elicit policy gaps that need to be potentially filled by the *kabupaten/kota* government.

### 2.1 The Local Government's Responsibilities in Law No. 39/2004

The principle criticism against Law No. 39/2004 deals with its bias towards the placement rather than the protection of migrant workers. The law reflects that emigration is regarded by the government simply as a business matter and, therefore, the placement of as many migrant workers as possible is what is desired. The lack of provisions for the protection of migrant workers within the law is obvious for the following reasons.

Out of the 109 articles of the law, only one chapter of eight articles (Articles 77–84) deal with migrant workers' protection. Although Article 77 of the law defines protection as preplacement, placement, and postplacement protection, the rest of the provisions in the chapter basically perceive protection in terms of the placement period overseas (Articles 78–81) and obligate migrant workers to pay for the assistance and protection program (Articles 83–84). In terms of preplacement protection, the law assigns the PPTKIS as the agency in charge (Article 82). The postplacement protection remains untouched.

Preplacement protection against extortion and exploitation has not been clearly elaborated by Law No. 39/2004. Article 39 of the law instructs the PPTKIS to bear all costs, unless stated otherwise. However, Article 76 Clauses (1) and (2) state that the PPTKIS can charge the costs of (i) identity documents processing, (ii) health and psychological tests, (iii) job training and professional certificates, and (iv) "others". The term "others" is then explained by Permenakertrans<sup>8</sup> No. PER.14/MEN/X/2010 to be (i) visa, (ii) food and accommodation during training, (iii) airfare, (iv) airport tax, (v) local transportation to the training center/shelter, (vi) insurance premium, and, last but not least, (vi) agency service fee. Furthermore, Article 76 (3) says that these costs must be administered transparently. No one can guarantee that the PPTKIS will not overcharge the migrant workers, unless there exist effective supervision by and proper sanctions from the government.

Unfortunately, clear provisions for the supervision of the PPTKIS have been particularly missing in the law. This is so because of several reasons. First, Law No. 39/2004 is inconclusive about the institutions in charge of supervision roles. Article 92 (1) of the law states that the government at all levels, including the local government, is responsible for the supervision, while Article 95 says that it is BNP2TKI's. Meanwhile, the delineation of authority between the government at all levels and BNP2TKI is far from clear (see Box 1).

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<sup>8</sup>Labor and Transmigration Ministerial Regulation.

Moreover, this triggers the question whether the supervision fund is also shared with *kabupaten/kota* where BNP2TKI has no representative, except the small service posts in only 14 *kabupaten/kota*.

### **Box 1**

#### **One-stop Service in West Nusa Tenggara: Central or Provincial Authority?**

West Nusa Tenggara (NTB) Province was the first province to have a one-stop service (OSS) for migrant workers. Although the idea had been brought to the fore since 2000, the concept was officially adopted only in 2008 when the key stakeholders—the governor of NTB, the head of BNP2TKI, and the head of NTB's Labor and Transmigration Agency—met officially in Mataram. On 15 December 2008, the governor of NTB passed Gubernatorial Regulation No. 32/2008 on the OSS of Placement and Protection of NTB Migrant Workers to officially mark the establishment of the OSS.

Considering the complexity of bureaucracy, the main mandate that the OSS bears is to integrate and, therefore, streamline the documentation services at the provincial level. With the existence of the OSS, migrant workers are supposed to get various services in one place. They can get information service, receive an overseas worker ID card (KTKLN), pay their compulsory US\$15 assistance and protection fee, pay the insurance premium, get a tax-free letter, attend pre-departure training, and receive their work contract, all in one place.<sup>9</sup> Therefore, the OSS accommodates a number of agencies, namely the BP3TKI, NTB's Labor and Transmigration Agency, the provincial tax office, and the insurance company.

While the existence of the OSS reflects a solid partnership between the central and provincial governments, it has so far been an ad hoc institution with ambiguous authority.<sup>10</sup> Changing its status to a permanent one will require institutional clarity. If the OSS is to become a provincial technical implementation unit, it should be under the authority of NTB's Labor and Transmigration Agency. If it is to become an independent provincial agency, it should have its own staff members who are capable of running its daily operation. Indeed, at present, the OSS resides in one of NTB's government-owned properties, while its office is run by ten staff members of the BP3TKI and two staff members of NTB's Labor and Transmigration Agency. Since the BP3TKI staff work for the central government, the possibility of transforming the OSS into a provincial agency is less likely.

*Source:* In-depth interviews with Susilo (Koslata official, male, about 50 years old, 24 October 2010); Sentot (BP3TKI official, male, about 50 years old, 19 October 2010); Bobby (LBH-APIK<sup>11</sup> Mataram official, male, about 40 years old, 25 October 2010); and Bakri (chairman of the PPTKIS Association in NTB, about 50 years old, 25 October 2010).

Second, provisions for the supervision (Article 92 (3)) and supervision mechanisms (Article 93) are yet to be completed. Article 92 (3) promises to further elaborate the supervision provision in a government regulation. Seven years had passed since the enactment of Law No. 39/2004, but the promise had not been materialized yet. Similarly, the reporting mechanism of the supervision—being the responsibility of the government at all levels—is stipulated generally in Article 93 the details of which are to be specified in a ministerial regulation. Again, until now, the details have not been made in any ministerial regulation.

Third, the supervision becomes more difficult to carry out at the *kabupaten/kota* level due to Article 23's stipulating that the headquarters of the PPTKIS are the ones that bear the responsibilities of the branch office. Meanwhile, the majority of the PPTKIS operate their

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<sup>9</sup>Before 2011, each Indonesian citizen leaving the country had to bear the tax of Rp1,500,000, unless owning a Tax Identification Number (NPWP). In early 2011, this tax was officially cancelled. Information on the cancellation had not yet reached some PPTKIS during the time of the interview.

<sup>10</sup>Permenakertrans No. PER.14/MEN/X/2010 does say that the OSS is coordinated by the governor as the representative of the central government. The governor would coordinate the BP3TKI, provincial and *kabupaten* labor and transmigration agencies, and other relevant institutions. This *permenakertrans*, however, does not address the authority question.

<sup>11</sup>LBH-APIK = Legal Aid Institute-Association of Indonesian Women for Justice.

business from Jakarta and only some of them establish branches at the *kabupaten/kota* level. This provision makes it difficult for the local government to prosecute branch offices of the PPTKIS that are in violation of the law.

## 2.2 Intergovernmental Responsibilities

Being one of the implementing regulations of Law No. 32/2004 on Regional Governance, Government Regulation No. 38/2007 assigns certain authorities to the central government (see column 1 of Table A1 in the Appendices section). Assessment of the central government's roles in this regulation can be summarized as follows.

First, the centralized characteristics of the regulation can be seen from major responsibilities being dominated by the central government. These responsibilities are related to the placement procedure rather than the protection of migrant workers. For example, at the central level, the official procedure related to the PPTKIS includes the issuance of (i) PPTKIS licenses (SIPPTKIS), (ii) recruitment recommendations, and (iii) mobilization permits (SIP) as well as (iv) the appointment of insurance companies, banks, and medical clinics. On the other hand, the procedure related to migrant workers incorporates the issuance of KTKLN, the computerized data system of overseas employment (SISKO TKLN), and the final pre-departure briefing (PAP). These are the areas where both the MoLT and BNP2TKI are interested in.

Second, the placement procedure has little to do with protection. On the other hand, there are areas where the placement procedure overlaps with protection and they are apparently not areas where power struggle at the central level takes place. These areas include the (i) formulation of bilateral and multilateral agreements, (ii) setting up of the working contract standard, and (iii) setting up of the standard of shelters and training centers for overseas employment (BLK-LN).

Third, Government Regulation No. 38/2007 takes the protection fee of US\$15/migrant worker seriously, as the supervision of protection fee compliance takes place at all levels, even at the *kabupaten/kota* level. However, in reality, the local government has nothing to do with this fund and cannot access its data.

In addition, Government Regulation No. 38/2007 also assigns the local government to support the roles of the central government. The local government is mainly responsible for activities during the preplacement stage, such as the various activities in the recruitment of migrant workers (see column 3 of Table A1).

Law No. 39/2004 delegates the following responsibilities to the *kabupaten/kota* government:

- a) Recruitment process: (1) to have prospective migrant workers registered (Article 36) and (2) regarding the placement contract between prospective migrant workers and the PPTKIS: (a) to be informed of the existence of a placement contract (Article 38) and (b) to get a copy of the placement contract (Article 54).
- b) PPTKIS license: to have the PPTKIS registered (Article 37).
- c) Passport recommendation: to give recommendation to prospective migrant workers for their passport application (Explanation of Article 51 (f)).
- d) Mediation of disputes: to assist in mediating between disputing parties (Article 85).
- e) Supervision: (1) to supervise the placement and protection of migrant workers (Article 92) and (2) to submit the report on the results of the supervision to the minister (Article 93).
- f) Investigation of violations: to act as an investigator in case of a violation (Article 101).

Comparing the responsibilities of the local government stipulated by Law No. 39/2004 and Government Regulation No. 38/2007, one can see that the latter is more extended than the former (see Table A2 of Appendix 1). Some local government responsibilities outlined in Government Regulation No. 38/2007 are indeed the responsibilities of the PPTKIS as per Law No. 39/2004, while some other responsibilities are not mentioned in Law No. 39/2004. Thus, we can divide the responsibilities outlined in Government Regulation No. 38/2007 into three categories (Table 1).

**Table 1. Division of the Local Government's Responsibilities according to Government Regulation No. 38/2007**

(1) Responsibilities which are consistent with Law No. 39/2004	(b) Responsibilities which are inconsistent (mentioned as the PPTKIS' responsibilities in Law No. 39/2004)	(c) Additional responsibilities (not mentioned in Law No. 39/2004)
Registration (A. 36 & A. 37)	Registration (A. 22)	Facilitation of the implementation of bilateral and multilateral agreements
Supervision of recruitment (A. 92)	Information dissemination (A. 22)	Information dissemination regarding SSKO TKLN and supervision of protection fee (US\$15) compliance
Permit to establish a PPTKIS branch office (A. 21 & A. 37)	Selection of migrant workers (A. 22)	Socialization of the content of work and placement contracts
Passport recommendation (A. 51)	Homecoming service (A. 75)	Assessment and validation of placement contracts
Permit to establish a PPTKIS shelter (A. 70)		
Assistance, supervision, monitoring (A. 92)		

Source: Government Regulation No. 38/2007 and Law No. 39/2004.

Note: A. = Article.

Critical questions about these findings are twofold: (i) Are local governments aware of and committed to their extended responsibilities? (ii) Are they capable of carrying out these responsibilities?

### 2.3 Policy Gap and Support for the Local Government's Initiatives

Komnas Perempuan, The Institute for Ecosoc Rights, United Nations Development Fund for Women (UNIFEM), and Migrant Care maintain their support for the decentralization of emigration governance.<sup>12</sup> For these NGOs, Law No. 32/2004 concerning Regional Governance is sufficient to back up the idea of transferring power, finance, and administration to the *kabupaten/kota* government. Komnas Perempuan, for example, has explicitly specified that gender and human rights issues are missing in Law No. 39/2004 and, therefore, advocated the formulation of *perda* with the perspectives of gender and human rights

<sup>12</sup>This information was obtained from interviews with Nita (NGO activist, female, about 30 years old, 2 October 2009), Cici (NGO activist, female, 35 years old, 5 October 2009), Ida (NGO activist, female, about 45 years old, 23 October 2009), Wiwik (NGO activist, female, about 45 years old, 1 April 2010), and Indah (NGO activist, female, about 35 years old, 19 April 2010).

(Komnas Perempuan, 2006a and 2006b). The Institute for Ecosoc Rights and Trade Union Rights Center (2008a) has also assisted Kabupaten Banyumas, Kabupaten Jember, and Kabupaten Tulang Bawang in formulating their *perda* considering that the provisions for protection are almost entirely absent in Law No. 39/2004. Since employment is an obligatory matter for the *kabupaten/kota* government (Article 14(1) of the law), it must not disregard the protection of overseas workers. Both the domestic and overseas workers are the citizens of Indonesia and are no different in terms of their rights. The *kabupaten/kota* government is obliged to provide them with the necessary services and protection while they are still within its jurisdiction.

Furthermore, it is definitely not recommendable to delay the protection of migrant workers until the national policy becomes perfect. Instead, improvements at the national and local levels have to be made side by side. Local initiatives have a great potential to fill in the existing national policy gaps in terms of protection, particularly the preplacement protection. Protection *perda* is needed for the following reasons. First, a *perda* can elaborate and specify a local government's roles and responsibilities in line with the mandates of Law No. 39/2004 and Government Regulation No. 38/2007.

Second, a *perda* can state the specific needs of a *kabupaten/kota* which cannot be accommodated by Law No. 39/2004. Such issues as main destinations and cost structures are locally specific; therefore, a *perda* can deal with these issues. For example, the majority of migrant workers from Lombok Barat and Lombok Tengah work in Malaysia and the Middle East, while their fellow migrant workers from Blitar and Ponorogo work in East Asia. With such locally specific conditions, the *perda* of these *kabupaten* can specifically stipulate the cost structure in the destination country where their migrant workers work.

Third, the process of drafting a protection *perda* involves civil society organizations and, therefore, enhances democratization. The participation of NGOs and academics in the process reveals one step towards improvement in governance. From a policy perspective, more interactions between civil society organizations, the local government, the local parliament, and the private sector will result in a better power balance.

Fourth, a *perda* can clearly stipulate sanctions against violations which take place at the *kabupaten/kota* level. A *perda* can act as a form of shock therapy for any party that is accustomed to extorting, abusing, and detaining migrant workers prior to their departure. With strong law enforcement, the protection of migrant workers will certainly improve.

Some parties are pessimistic, however, that a protection *perda* can effectively serve its purpose because, empirically speaking, its implementation and law enforcement have been far from sufficient. The question is now whether we should still establish a normative law whose implementation and enforcement are very slow or cling to the evidence and abandon the idea of having a *perda*. Based on results of interviews and FGDs with key stakeholders, the establishment of protection *perda* is urgent for the sending *kabupaten/kota*. The ultimate desire for establishing a protection *perda* is for the *perda* to serve as a guide for civil society behaviors and attitudes that respect migrant workers' rights. The passing of a protection *perda* should go hand in hand with public pressure for effective implementation. If Indonesians do not respect their fellow citizens working abroad, what kind of treatment do we expect Indonesian migrant workers will receive in their destination countries?



### III. TYPOLOGY AND MAPPING ANALYSIS OF *PERDA* RELATED TO OVERSEAS EMPLOYMENT

To explain the general regulatory framework at the *kabupaten* level, this chapter particularly analyzes *perda* related to overseas employment. First, it discusses the general fast-growing phenomenon of *perda* on taxes and *retribusi* after the onset of decentralization in 2001.<sup>13</sup> While most of the *perda* related to business and investment are considered bad for public service delivery, as they impose fees, *perda* related to overseas employment can be either extractive or nonextractive. Therefore, constructing a typology of these *perda* is necessary before doing the mapping analysis. The mapping analysis itself is an exercise where *kabupaten* according to *perda* type are overlaid with *kabupaten* according to the number of migrant workers. Finally, findings from the mapping analysis will reveal common regulations related to overseas employment.

#### 3.1 Regional Autonomy and *Perda* on Taxes and *Retribusi*

The decentralization framework is centered around political, administrative, and fiscal matters which are explained in two very important laws: Law No. 32/2004 on Regional Governance and Law No. 33/2004 on Fiscal Balance. In political and administrative matters, the local government has to assume the responsibility to provide public services, including employment. In financial and fiscal matters, a certain budget allocation is granted to the local government based on a set of predetermined criteria.

These two legal pillars are backed by various implementing regulations. According to Mahi (2002), one of the most important supports is Law No. 34/2000 on Local Taxes and *Retribusi* (PDRD). Law No. 34/2000 allowed flexibility for the local government to generate local revenues. Through *perda*, the local government can impose taxes and *retribusi* without the approval of the central government.

However, having the objective of maximizing its revenue, rather than optimizing it, every *kabupaten/kota* government tends to make the best use of Law No. 34/2000 by formulating *perda* on taxes and *retribusi* at the cost of long-term investment. Coupled with the euphoria of regional autonomy, the open-list nature of Law No. 34/2000, apparently, has given room to the local government to exercise its power. Moreover, the freedom to issue *perda* to increase local revenues has been misunderstood by the local government as a symbol of independence from the central government (Mawardi et al., 2009). Meanwhile, opportunities for local governments to work together in one free economic zone and formulate a common economic policy have been so far almost out of the question. These will eventually obstruct local investment, create high-cost economy, reduce Indonesia's competitiveness, and weaken the nation's integrity (Soesastro, 2001). At the same time, the span of control of the central government over the so-called problematic *perda* is notoriously weak, particularly in the context of 524 *kabupaten/kota* (Directorate-General of Fiscal Balance, 2008).<sup>14</sup>

The 2000s saw a booming of problematic *perda*, which was considered one of the side effects of decentralization on business enabling environment. The phenomenon of problematic *perda* has

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<sup>13</sup>*Retribusi* is officially a user charge that is collected as payment in return for a service. However, in practice, it includes other nontax charges collected by the government.

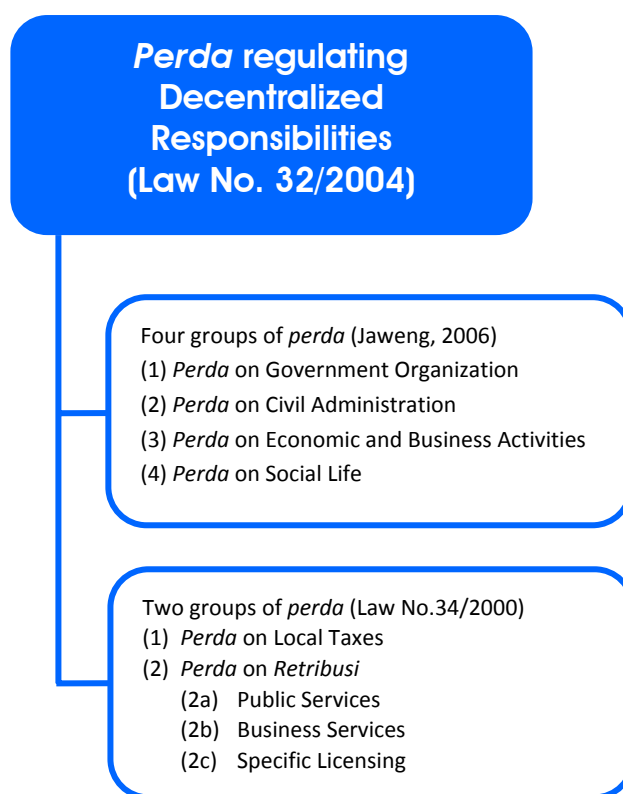
<sup>14</sup>The latest data.

been intensively discussed and has become a national concern. Business communities have heavily complained, urging the central government to cancel these *perda*. Indeed, these *perda* encompass taxes and *retribusi* across sectors ranging from agriculture, trade, industry, transportation, communication, employment, etc. In general, they might appear as *perda* on business license, *perda* on the distribution of goods and services, and *perda* on general administration fees (Bachtiar et al., 2009). Many times, the business communities have to pay double taxes horizontally (across different sectors) and vertically (at the central and local levels).

The central government has been criticized for its slow action to revoke problematic *perda* that clearly distort the investment climate. The speed of the cancellation cannot keep up with the speed of issuing new *perda*. After many years of pros and cons, in late 2009, the parliament finally passed the revision of Law No. 34/2000, which was Law No. 28/2009 on PDRD. Unlike Law No. 34/2000, Law No. 28/2009 employs a closed-list system where only the listed taxes and *retribusi* are allowed to be imposed locally. Moreover, *kabupaten/kota* governments should seek assistance and approval from the provincial government before issuing new *perda*. Two years have been given to *kabupaten/kota* governments to terminate the problematic *perda*, which are not included on the list of the new law.

### 3.2 Typology of *Perda* Related to Overseas Employment

There are multiple ways of grouping *perda* which regulate decentralized responsibilities. One possible way is to categorize them based on what they regulate; another is by categorizing them based on their fee implication. Jaweng (2006) highlighted four categories of *perda* (Figure 1). He echoed that, except for the category of *perda* related to government organization, there are three other categories of *perda* (in particular those related to economic activities) that most likely have fee implications through tax, *retribusi*, voluntary contribution, or, at the very least, penalty for violation.

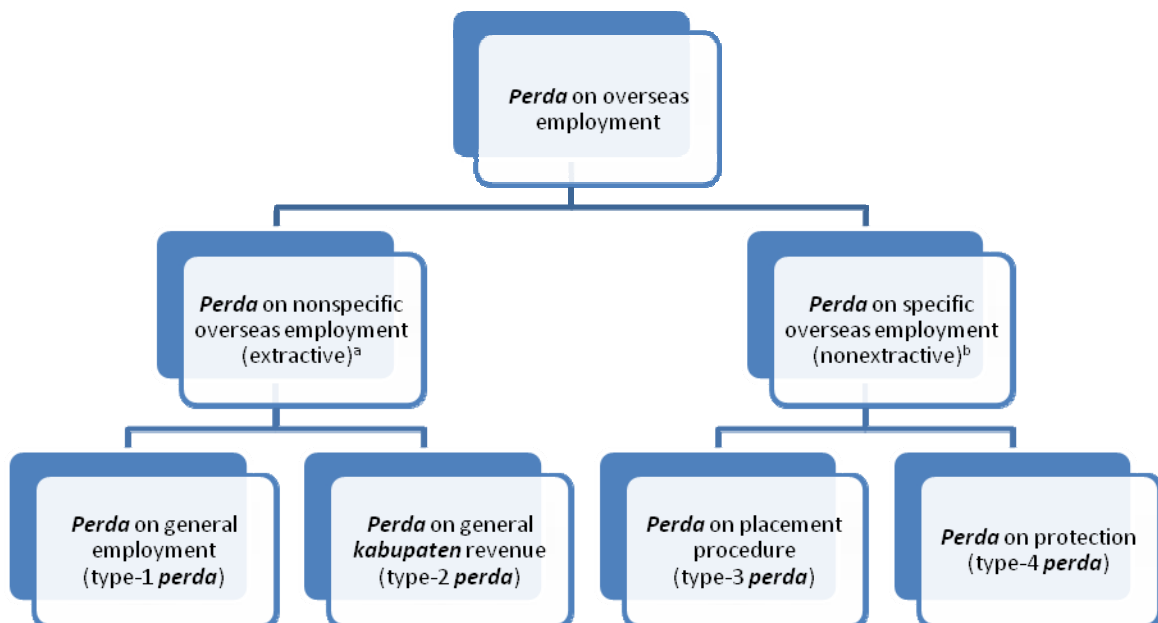


**Figure 1. General categories of *perda***

Being one of the decentralized responsibilities, employment is also the area where *kabupaten/kota* governments can possibly extract levies. Although this violates the law, many local governments insist on collecting them. Particularly for migrant-source *kabupaten/kota*, the tendency to levy is very high.

The local government can levy migrant workers in various ways. First, it can levy them directly through administration fees (i) when they file an official registration as an employment seeker and (ii) when they ask for an official recommendation to be attached to their passport application. Second, it can also levy them indirectly through the PPTKIS. In running its operation, the PPTKIS must get approval from the local government. The approval appears as a letter of recommendation, such as (i) recommendation to acquire a business license, (ii) recommendation to recruit workers, (iii) recommendation to establish a training center, and (iv) recommendation to establish a dormitory. Some *kabupaten/kota* might also impose placement fees to the PPTKIS. One should know that charging the PPTKIS means charging the migrant workers. In the absence of accountability, the former will simply transfer all the costs (and most probably with profit) to the latter.

The majority of *perda* related to overseas employment are about charges and fees. They are formulated rather generally and are not specific about overseas employment. In addition, there are also specific *perda* on overseas employment, which are established by migrant-source *kabupaten/kota*. These are *perda* without the spirit of extracting levies. On these grounds, we offer the typology with two general types of *perda*: nonspecific (extractive) and specific (nonextractive) *perda*. Specifically, *perda* related to overseas employment can be grouped into four types of *perda* (Figure 2).



<sup>a</sup>Title of *perda* does not specifically mention overseas employment.

<sup>b</sup>Title of *perda* specifically mentions overseas employment.

**Figure 2. Typology of *perda* related to overseas employment**

Source: Author's framework.

*Perda* on general employment (type 1) focus on charges imposed on general employment, including overseas employment.<sup>15</sup> These charges are paid either by the workers or by the companies. Some *kabupaten/kota* differentiate *perda* that charge the workers (*perda* on employment service charges) from *perda* that charge the companies (*perda* on licensing charges).<sup>16</sup> However, the majority of *kabupaten/kota* just combine them in one category. Type-1 *perda* are mostly issued by migrant-source *kabupaten/kota*. Possible titles of type-1 *perda* are *perda* on employment, *perda* on employment services, and *perda* on employment charges (see Table A3 of Appendix 1).

*Perda* on general *kabupaten/kota* revenues (type 2) relate to possible revenues that the *kabupaten/kota* can generate, including those from overseas employment. They are formulated more generally than type-1 *perda*. Charges in type-2 *perda* are paid by the citizens and various business communities, migrant workers, and the PPTKIS. Possible titles of type-2 *perda* are *perda* on third party contribution, *perda* on administration fees, *perda* on legalization fee, and *perda* on all other revenues (see Table A3 of Appendix 1).

*Perda* on placement procedure (type 3) deal with overseas employment procedure. It does not rule any financial consequences to the migrant workers nor the PPTKIS. Although in some cases the title explicitly mentions the protection of migrant workers, the content regulates the placement procedure heavily and, therefore, this type is categorized separately from type-4 *perda*. Type-3 *perda* tend to only duplicate the substance of Law No. 39/2004 and, therefore, do not fill the policy gap. Indeed, the presence of type-3 *perda* is rather unnecessary because the placement procedure has been regulated nationally.

*Perda* on protection (type 4) are concerned with the protection of migrant workers. They do not entail any charge and concentrate on what have not been ruled in the national law. Protection *perda* mandate the establishment of a protection commission: a specialized body which expedites the handling of abuse and extortion cases, mediates between various stakeholders, and issues warnings when violations against migrant workers' rights occur.

Type-1 and type-2 *perda* intend to secure local revenues. However, since they charge what they should not or more than they should, these *perda* are considered problematic. Certainly, this is in violation of the old law (Law No. 34/2000) and even more of the new law (Law No. 28/2009). Many of these *perda* have been cancelled by the Ministry of Home Affairs (MoHA) on the grounds that they go against the spirit of local governments to welcome investment.<sup>17</sup>

However, efforts for the cancellation face enormous difficulties. The standard procedure that these *perda* go through is via an examination by the Ministry of Finance (MoF) from which the

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<sup>15</sup>*Perda* on general employment might initially intend to protect employees, for example, against work termination, violation of minimum wage, etc. However, many of them end up with an extractive nature which is implied in the article on cost structure or the article that assures further arrangements on another local regulation. These articles are usually placed at the end of the *perda*.

<sup>16</sup>*Perda* on general employment stipulate charges for various services, such as permit on overtime, registration of employment contract, legalization of company rules, facilitation on labor welfare, supervision of work safety, etc. This kind of *perda* always puts protection as the rationale for the charges it imposes. However, the services in return are those within the responsibilities of the local government and, therefore, they should be provided free of charge (Pambudhi, 2003).

<sup>17</sup>Much hope is put in the implementation of the closed-list system under Law No. 28/2009. Since the law explicitly stipulates the allowed *perda*, the local governments, therefore, cannot issue any *perda* outside the allowed ones.

problematic *perda* are submitted for further re-examination by the MoHA.<sup>18</sup> Only after the re-examination can the MoHA finally issue a cancellation letter.

This process is notoriously long and winding due to at least three major factors. First, obtaining copies of the *perda* is not easy since the *kabupaten/kota* do not send them to Jakarta. In fact, the *kabupaten/kota* tend to hide them.<sup>19</sup> In the absence of their copy, the examination of *perda* is impossible. Second, if the total *kabupaten/kota* amount to 524 *kabupaten/kota* and suppose that one *kabupaten/kota* produces one *perda* per month, both the MoF and MoHA have to be ready to examine no less than 524 *perda* per month; a task that is next to impossible.<sup>20</sup> Third, the financial consequence of investment-related policies might not appear directly in the *perda* but in lower legal products such as *bupati* decrees, which are very difficult to detect from the national level.

Aside from the legal scrutiny of these *perda*, there is a persistent problem of implementation. Even if the minister for home affairs eventually issues a letter ordering the cancellation of the *perda*, the order is not necessarily obeyed by the local authorities. If the local government does cancel the *perda*, it will issue a lower legal product with the same content of the cancelled *perda*. The lower legal product may be in the form of a *bupati* regulation or decree. The span of control of the central government over the existing *perda* is already very low, let alone over lower legal products.

Because of all these difficulties, not surprisingly, the existence of type-1 and type-2 *perda* is still pervasive. The spirit of giving protection to the migrant workers is, therefore, severely weakened by the enthusiasm of the local government to levy against the placement of overseas employment.

The similarity of type-3 and type-4 *perda* is that both do not discuss anything about financial consequences that the migrant workers or the PPTKIS have to bear. However, their difference is that the former focuses more on the placement procedure, while the latter is more focused on the protection of migrant workers. This is reflected in the proportion of articles and provisions for the placement procedure to those for migrant workers' protection.

### 3.3 Mapping Analysis

Results of the mapping analysis are explained as follows. First, Table 2 shows that, in general, there exists a correlation between *kabupaten/kota* having *perda* related to overseas employment and *kabupaten/kota* having a large number of migrant workers. In quintile 1 (Q1), only 14 out of the 84 *kabupaten/kota* issued *perda* related to overseas employment, while in Q5, 36 out of the 82 *kabupaten/kota* issued these *perda*. This implies that the more migrant workers a *kabupaten/kota* has, the more likely it produces *perda* related to overseas employment. In total, compared to the *kabupaten/kota* in the other quintiles, *kabupaten/kota* in Q5, which are the migrant-source *kabupaten/kota*, produced more *perda*, both in terms of quantity and variation.

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<sup>18</sup>With Law No. 28/2009, this task is shifted to the provincial level where the *kabupaten* government should seek consultancy with provincial officials prior to the passing of the *perda*.

<sup>19</sup>This was the experience of the research team in Kabupaten Ponorogo.

<sup>20</sup>The Asia Foundation's study found that in 2002 alone, 635 *perda* were passed in 40 research areas. This means that on average, every *kabupaten* produces about 16 *perda* per year (Satriyo et al., 2003).

**Table 2. Kabupaten/Kota with Perda Related to Overseas Employment: Indicative Numbers of Perda and Migrant Workers<sup>21</sup>**

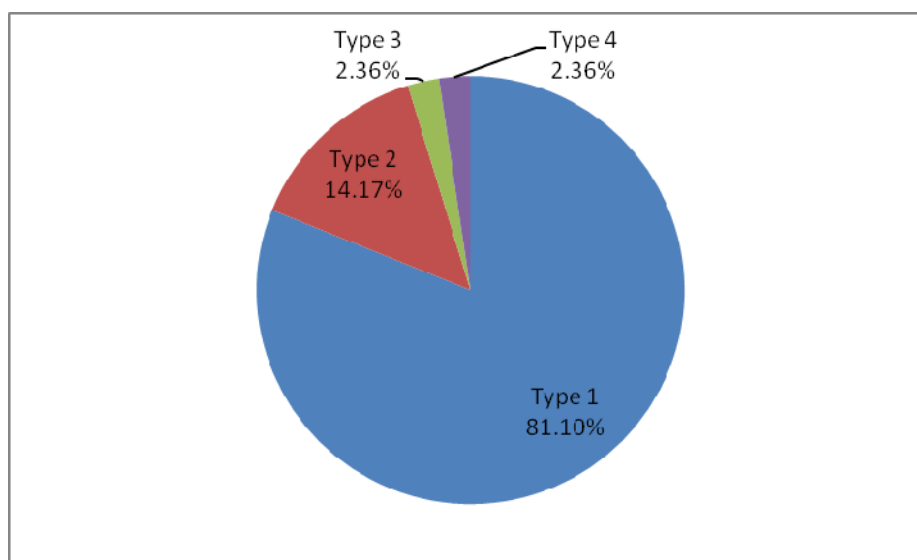
	Q1	Q2	Q3	Q4	Q5
$\Sigma$ Kabupaten/Kota = 418 <sup>a</sup>	84	84	84	84	82
$\Sigma$ Migrant workers in each kabupaten/kota issuing perda <sup>b</sup>	0–22	36–174	232–802	945–3,534	4,202–57,067
$\Sigma$ Kabupaten/kota issuing perda related to overseas employment = 115	14	21	20	25 <sup>c</sup>	35 <sup>c</sup>
$\Sigma$ Kabupaten/kota issuing type-1 perda	12	20	19	23	23
$\Sigma$ Kabupaten/kota issuing type-2 perda	2	1	1	3	11
$\Sigma$ Kabupaten/kota issuing type-3 perda	0	0	0	0	3
$\Sigma$ Kabupaten/kota issuing type-4 perda	0	0	0	0	3
$\Sigma$ Perda related to overseas employment = 127	16	23	20	28	40
$\Sigma$ Type-1 perda	14	22	19	25	23
$\Sigma$ Type-2 perda	2	1	1	3	11
$\Sigma$ Type-3 perda	0	0	0	0	3
$\Sigma$ Type-4 perda	0	0	0	0	3

Source: Author's calculation based on the 2005 Podes and reported perda available on the websites of (i) KPPOD.org; (ii) gudanghukum.org; and (iii) legalitas.or.id.

<sup>a</sup>The number of kabupaten/kota is according to the 2005 Podes.

<sup>b</sup>Data on the number of migrant workers in each kabupaten/kota is taken from the 2005 Podes.

<sup>c</sup>Some kabupaten/kota issue more than one perda of the same type, while some others issue more than one perda of different types (see Table A3 of Appendix 1).



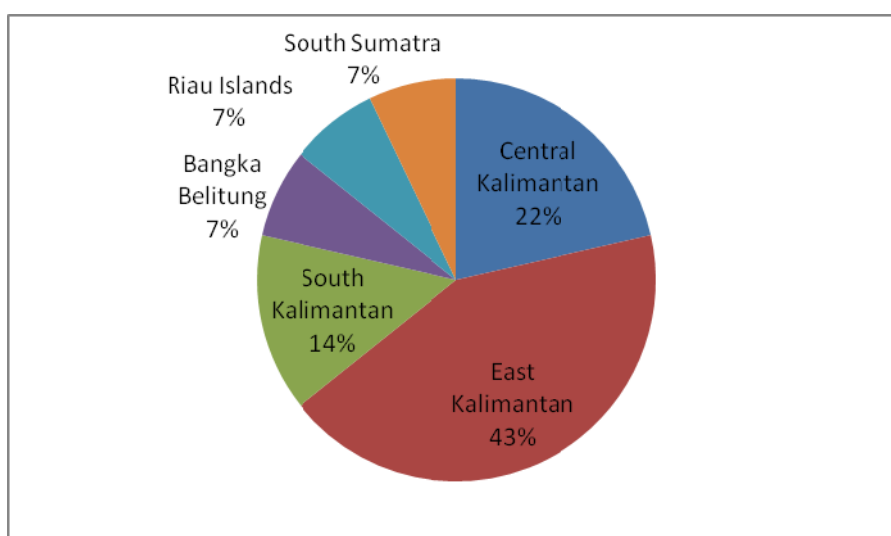
**Figure 3. Distribution of perda according to their types**

Note: n = number of perda = 127.

<sup>21</sup>See Table A3 of Appendix 1 for more detailed information about every perda; Figure A1 of Appendix 2 for the distribution of perda based on their legislated years; and Figure A2 of Appendix 2 for the distribution of perda based on their corresponding provinces.

Second, Figure 3 demonstrates that out of the 127 *perda*, only 3 *perda* (2.4%) deal with protection (type-4 *perda*). The majority (81.1%) fall in type-1 *perda*, while 14.2% belong to type-2 *perda*. Moreover, only 3 *kabupaten/kota* (3.7%) out of the total 82 migrant-source *kabupaten/kota* in Q5 have a protection *perda*. Meanwhile, 34 *kabupaten/kota* (41.5%) of the Q5 *kabupaten/kota* are more interested in passing extractive *perda*. Indeed, the awareness and willingness of the local government to take the initiative to protect their migrant workers are still far from adequate.

Third, surprisingly, many *kabupaten/kota* which have few migrant workers (Q1 to Q3) pass type-1 and type-2 *perda*. The extreme case is that *perda* related to overseas employment are issued even by Q1 *kabupaten/kota* that do not have any migrant workers, such as Kabupaten Berau of East Kalimantan and Kabupaten Murung Raya of Central Kalimantan. These two *kabupaten* are located close to the borders with Malaysia and Brunei and have become migrant workers' transit areas.



**Figure 4. Distribution of corresponding provinces of *kabupaten/kota* in Q1**  
 Note: n = number of *kabupaten/kota* = 14.

Figure 4 highlights the corresponding provinces of Q1 *kabupaten/kota* that are well known to be transit areas where people from all over Indonesia cross the borders (see also Figure A2 of Appendix 2). At the transit areas, prospective migrant workers and the PPTKIS require various administrative services from the local government. In addition, undocumented migration activities that involve making fake identity documents take place in these areas. Considering this potential, the *kabupaten/kota* governments issue *perda* to impose charges on the migrant workers and PPTKIS. Porous borders of Indonesia to neighboring countries such as Malaysia, Singapore, and Brunei explain why *kabupaten/kota* with few migrant workers issue *perda* related to overseas employment.

Domestic migration provides another explanation since type-1 and type-2 *perda* are also applicable to *kabupaten/kota* with domestic migrant workers. *Kabupaten/kota* in Kalimantan where mining companies are located, such as Kota Bontang and Kabupaten Kutai Timur, are areas attracting workers from other parts of Indonesia, particularly Java. Local governments in these *kabupaten/kota* would also be eager to levy domestic migrant workers. That is why type-1 and type-2 *perda* tend to spread in the *kabupaten/kota* regardless of the number of overseas migrant workers.

**Table 3. Kabupaten/Kota with Multiple Perda Related to Overseas Employment**

<i>Kabupaten/Kota</i>	Q	No. of Migrant Workers	No./Year	Title of <i>Perda</i>	Type
Kota Bontang	1	10	7/2002	Employment Permit Fee	1
			6/2002	Employment Service Fee	1
Kabupaten Kutai Timur	1	14	20/2002	Employment Service Fee	1
			18/2002	Skills Development Fund for Migrant Workers	1
Kabupaten Bolaang Mangondow	2	72	21/2001	Employment Permit Fee	1
			22/2002	Employment Service Fee	1
Kota Bengkulu	2	124	5/2003	Employment Permit Fee	1
			6/2003	Employment Service Fee	1
Kabupaten Donggala	4	1,139	11/2002	Business License of the PPTKIS	1
			12/2002	Employment Recruitment Fee	1
Kabupaten Sukoharjo	4	1,021	30/2001	Employment Permit Fee	1
			31/2001	Employment Service Fee	1
Kabupaten Dompu	4	2,802	16/2001	Employment Service Fee	1
			20/2001	Administration Fees	2
Kabupaten Bima	5	5,853	158/2006 <sup>a</sup>	Employment Service	1
			25/2001	Administration Fees	2
Kabupaten Cianjur	5	49,126	8/2001	Administration Fees	2
			15/2002	Protection of Indonesian Migrant Workers	3
Kabupaten Jember	5	14,469	12/2003	Employment Fee	1
			5/2008	Service for, and Placement and Protection of Indonesian Migrant Workers	3
Kabupaten Sumbawa	5	8,304	12/2003	Employment Service Fee	1
			21/2007	Protection and Empowerment of Indonesian Migrant Workers	4
Kabupaten Lombok Barat	5	18,237	13/2002	Other Legitimate Local Revenues	2
			5/2008	Protection of Indonesian Migrant Workers	4

Source: Author's calculation.

<sup>a</sup>Bupati decree.

Extractive *perda* which charge migrant workers for administrative services are against Presidential Regulation No. 36/2002 on the Ratification of ILO Convention No. 88 on the Organization of the Employment Service. In general, Article 6 (b) of the presidential regulation instructs the government at all levels to speed up workers' mobility domestically and internationally. In more detail, Article 38 (1) of Law No. 13/2003 on Labor states that government institutions as well as the PPTKIS are not to charge any fee to workers directly or indirectly. Collecting levies from workers also violates Law No. 28/2009. The local government is responsible for providing regular services to the workers free of charge as the reflection of its accountability to its citizens.



Fourth, the typology that we made is not necessarily mutually exclusive. Table 3 highlights that some *kabupaten/kota* issue more than one *perda*. Bontang, Kutai Timur, Bolaang Mangondow, Bengkulu, Donggala, and Sukoharjo legislated two *perda* of type 1. Meanwhile, Dompu, Bima, Jember, Sumbawa, Cianjur, and Lombok Barat established two *perda* of different types. What is striking is that having the ultimate protection *perda* does not necessarily mean not having extractive *perda*. Apparently, *kabupaten/kota* that pass a protection *perda* do not cancel their extractive *perda*. Sumbawa and Lombok Barat are *kabupaten* with a protection *perda* but also with extractive and specialized *perda*. Therefore, the *kabupaten/kota* may protect their migrant workers in some ways but, at the same time, violate the law and tax the workers, directly or indirectly. The only mutually exclusive case is Blitar, which only passes a protection *perda* and none of the extractive types.

## IV. PROTECTION *PERDA*: TO HAVE OR TO HAVE NOT

This chapter answers the last research question posed in this study. In this chapter, comparison and contrast are made between *perda* from Kabupaten Blitar and Kabupaten Lombok Barat. And then, textual analysis is conducted on the elaboration of the local government's roles in Law No. 39/2004 and in the *perda* from Blitar and Lombok Barat. Furthermore, discussion is made on the legal drafting process in the four research *kabupaten*. After that, examination is made as to why Blitar and Lombok Barat were successful in the process, while Ponorogo and Lombok Tengah which apparently had already had the bill of the protection *perda* failed to legislate it. Emphasis is put particularly on the enabling conditions under which the *perda* could pass the legislation process.

### 4.1 Protection *Perda* of Kabupaten Blitar and Kabupaten Lombok Barat

#### 4.1.1 Protection Commission

One similarity between the *perda* from Blitar and Lombok Barat lies in the fact that both stipulate the establishment of a protection commission at the *kabupaten/kota* level.<sup>22</sup> The formation of this independent body comes from the understanding that the labor and transmigration agency will not be able to solve problems alone. Meanwhile, problems at the *kabupaten/kota* level require coordination with many institutions, even including those from other *kabupaten/kota* or provinces. The protection commission is capable of doing this, as it is made up of independent professionals with the capacity of expediting solutions and mediating disputing parties in the area of overseas employment.<sup>23</sup> In general, the establishment of the protection commission at the *kabupaten/kota* level can help solve the abundant cases at the migrant-sending *kabupaten/kota* and villages.

Except for some trivialities, the protection commissions in Blitar and Lombok Barat are similar in terms of their establishment and general responsibilities (Table 4). The only substantial difference lies in the fact that the protection commission in Blitar was established and selected by the parliament. This is due to the fact that the protection *perda* of Kabupaten Blitar was an initiative made by the parliament, while that of Kabupaten Lombok Barat was the executive's initiative. We found during our fieldwork that *perda* which came from the executive's initiative were much easier to be implemented compared to those coming from the legislative's initiative.

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<sup>22</sup>In Kabupaten Blitar, the *perda* was still being revised, and, therefore, the protection commission had not been formed. In Kabupaten Lombok Barat, the *perda* had already come into force and the protection commission was inaugurated in October 2010. However, its existence had not been known by many stakeholders interviewed. The lack of socialization of the *perda* had been the concern of many NGO activists such as Rita (PPK official, female, about 50 years old, 21 October 2010), Susilo (24 October 2010), and Bobby (28 October 2010).

<sup>23</sup>Interview with Susilo (24 October 2010).

**Table 4. Comparison of Protection Commissions in Kabupaten Blitar and Kabupaten Lombok Barat**

Kabupaten Blitar (Perda No. 16/2008)	Kabupaten Lombok Barat (Perda No. 5/2008)
<p><b>Establishment (A. 25):</b> Established by the parliament, but authorized by the <i>bupati</i>; consisting of five people (NGO activists, local leaders, professionals); to be selected through a fit-and-proper test by the parliament; working for three years with a possibility to be re-elected once more; to be appointed and terminated with a <i>bupati</i> decree</p>	<p><b>Establishment (A. 20):</b> Established by the <i>bupati</i> after being selected by a team consisting of five people (academics, migrant workers' association members, local government officials, members of the parliament, NGO activists); consisting of five people; working for five years with a possibility to be re-elected once more</p>
<p><b>Responsibilities (A. 26):</b> To receive complaints related to violations of the recruitment and placement procedure; to establish regulations, complaint-handling mechanism; to conduct mediations; to manage a "safe shelter"; to campaign for the migrant workers' rights and obligations; to coordinate with relevant institutions</p>	<p><b>Responsibilities (A. 23):</b> To receive complaints; to collect and analyze data related to complaints; to push the labor and transmigration agency, relevant agencies, and the PPTKIS to solve cases of the migrant workers; to mediate parties in dispute; to coordinate with relevant institutions from other <i>kabupaten</i> or provinces</p> <p><b>Authorities (A. 24):</b> To request info regarding migrant workers' cases from the PPTKIS and responsible officials; to invite parties for consultation and mediation</p>
<p><b>Reporting (A. 26):</b> To report to the <i>bupati</i> annually</p>	<p><b>Reporting (A. 25):</b> To report to the <i>bupati</i> biannually</p>

Source: Perda No. 16/2008 of Kabupaten Blitar and Perda No. 5/2008 of Kabupaten Lombok Barat.

Note: A. = Article.

#### 4.1.2 Roles and Responsibilities of the Local Government

Table 5 compares the local government's roles and responsibilities as attributed by Law No. 39/2004 and those stipulated by the *perda* of Kabupaten Blitar and Kabupaten Lombok Barat.

Some important lessons that arise from this exercise are as follows. First, it is clear from the table that the stipulations in the *perda* strengthen the mandate of Law No. 39/2004 and, therefore, give more protection to the workers. This is particularly true in the case of registration, placement contract between the PPTKIS and the migrant workers, and supervision. The *perda* from Blitar and Lombok Barat are stronger in assigning the labor and transmigration agency to check the validity of ID documents. Similarly, the roles and responsibilities of the labor and transmigration agency are also stronger in the area of placement contract. Blitar's *perda* requires the labor and transmigration agency to be present during the signing of a placement contract, to get a copy of it, and to ensure that each worker signs the contract within six days after it passes the selection process. In addition, the supervisory roles of the labor and transmigration agency are made clearer in the *perda* of both *kabupaten* than in Law No. 39/2004.

**Table 5. Comparing the Roles & Responsibilities of the Local Government in Law No. 39/2004 and Those in Two *Perda***

<b>Roles and Responsibilities</b>	<b>Law No. 39/2004</b>	<b>Kabupaten Blitar <i>Perda</i> (Perda No. 16/2008)</b>	<b>Kabupaten Lombok Barat <i>Perda</i> (Perda No. 5/2008)</b>
Registration	To register prospective migrant workers (A. 36)	To check validity of ID documents (A. 23)	To check the validity of ID documents (A. 12)
Placement contract	The labor and transmigration agency should be informed of the placement contract (A. 38). The PPTKIS should send a copy of it to the labor and transmigration agency (A. 51).	To be signed in front of a labor and transmigration agency officer (A. 11) To get a copy of it (A. 16) To ensure that each worker signs the contract within six days after passing the selection process (A. 12)	To check the validity of the placement contract (A. 12)
Recommendation for passport application	To give a recommendation letter (Explanation of A. 51)	---	---
Supervision	To supervise the implementation of the placement and protection of migrant workers (A. 92)	The labor and transmigration agency is to appoint one or two officers to supervise the PPTKIS (A. 22).	The labor and transmigration agency has to supervise the existence and operation of the PPTKIS. The labor and transmigration agency has to get a biannual report from the PPTKIS (A. 19).
Supervisory mechanism	The labor and transmigration agency reports the supervision of the placement and protection of migrant workers to the minister (A. 93).	---	The <i>kabupaten's</i> labor and transmigration agency is to report to the provincial labor and transmigration agency and the minister for labor in case of a violation by the PPTKIS (A. 19).
Mediation in case of a dispute	The labor and transmigration agency can help mediate the dispute (A. 85).	The labor and transmigration agency is to be invited to mediate the dispute (A. 32).	The labor and transmigration agency/protection commission receives cases and must follow them up within 10 x 24 hours (A. 27, A. 28).
Investigation in case of a legal offense	The selected officials at the labor and transmigration agency are given authority to act as special investigators (A. 101).	Appointed local government officials are given the authority to investigate violations against the <i>perda</i> (A. 35).	---
Other roles and responsibilities	---	Protection commission (A. 25–A. 28) Safe shelter (A. 26) Protection fund (A. 29)	Protection commission (A. 20–A. 25) Soft loan (A. 6) Rehabilitation for victims of abuse and trafficking (A. 7) Crisis center (A. 26)

Source: Law No. 39/2004; Perda No. 16/2008 of Kabupaten Blitar; and Perda No. 5/2008 of Kabupaten Lombok Barat.  
Note: A. = Article.

Second, a general weakness in the establishment of a law is that the implementing legislation comes much later.<sup>24</sup> In the case of Law No. 39/2004, which was issued in 2004, its implementing legislation, namely Permenakertrans No. PER.19/MEN/V/2006, was only delivered two years afterwards. There was a two-year vacuum where Kepmenakertrans<sup>25</sup> No. KEP.104A/MEN/2002 was still used. Furthermore, the socialization of the implementing legislation was also problematic. Not uncommon, a time lag exists between the establishment of a *permenakertrans* or *kepmenakertrans* and the local government being informed of it.<sup>26</sup> In other words, the establishment of the implementing legislation itself is already slow and its socialization is even slower. Protection *perda*, which have the intention of giving protection to the migrant workers, have the potential to fill this policy gap. One extreme case is in the local government's responsibility in terms of supervision and supervisory mechanism whose implementation legislation is still nonexistence. In this instance, Kabupaten Lombok Barat's *perda* managed to stipulate it, although only in a general way.

Third, even if the implementing legislation does exist, it might not be sufficiently specific. In many cases, it simply copies and pastes what is written in the law (Table 6). In other words, the implementing legislation fails to deliver the details as well, except for Permenakertrans No. PER.14/MEN/X/2010, which explicitly exempts the migrant workers from any charge. Compared to the law and regulations at the national level, the *perda* of Kabupaten Blitar and Kabupaten Lombok Barat offer even more details in specifying the local government's roles and responsibilities.

Fourth, local initiatives, such as the protection fund in Blitar and the soft loan, rehabilitation, and crisis centers in Lombok Barat, have to be appreciated. Although they are not immediately available, the policy process has touched some important areas which were previously never addressed in any legal framework at the national level.

## 4.2 The Legal Drafting Process of *Perda* in the Research *Kabupaten*

### 4.2.1 Kabupaten Blitar

The *perda* of Kabupaten Blitar that governs migrant workers went through a long process. The initiative started in 2003 when some NGOs, with the support of UNIFEM, raised the idea of formally protecting migrant workers from Blitar through a *perda*. The two main NGOs were Blitar Migrant Workers' Association (SBMB) and Association for the Care of Women and Migrant Workers (P3BM). Other NGOs involved were the Post Institute, Lapedam NU, and Sitas Desa.

The process was interrupted for some time due to the 2004 national elections and the *kabupaten* election in 2005. In 2006, the parliament, in particular Commission IV in charge of labor, agreed to embrace this idea and intensified the legal drafting process.

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<sup>24</sup>Most of the time, laws only stipulate normative terms and, therefore, they require the implementing legislation, such as *permenakertrans* and *kepmenakertrans*, which becomes the technical guidance for implementation. However, the problem of slow establishment of the implementing legislation happens to all laws, not in particular to Law No. 39/2004.

<sup>25</sup>Labor and Transmigration Ministerial Decree.

<sup>26</sup>When the research team visited Kabupaten Ponorogo's Labor and Transmigration Agency in June 2010 and asked what kind of regulation was used in the placement and protection of migrant workers, the officer replied Kepmenakertrans No. KEP.104A/MEN/2002. Meanwhile, the research team also found that Kabupaten Blitar's Labor and Transmigration Agency issued a circular to all village heads dated 2 June 2009 in which it referred to Law No. 39/2004 and Kepmenakertrans No. KEP.104A/MEN/2002.

**Table 6. Specific Roles and Responsibilities of the Local Government Where Law No. 39/2004 Promised to Issue the Implementing Legislation**

Law No. 39/2004	Implementing Legislation		
	Permenakertrans No. PER.19/MEN/V/2006	Permenakertrans No. PER.18/MEN/IX/2007	Permenakertrans No. ER.14/MEN/X/2010
<p><b>Registration (A. 36):</b></p> <p>(1) Job seekers wishing to work overseas have to register in the relevant government agency at the <i>kabupaten</i> level (A. 36 (1)).</p> <p>(2) The registration as mentioned above is done according to the <i>permenakertrans</i>.</p>	Both the staffs of the PPTKIS and the labor and transmigration agency disseminate information to prospective migrant workers who have registered at the labor and transmigration agency (A. 8).	Both the staffs of the PPTKIS and the labor and transmigration agency disseminate information to prospective migrant workers who have registered at the labor and transmigration agency (A. 9).	Job seekers wishing to work overseas have to register at the <i>kabupaten</i> -level agency without being charged any fee (A. 8).
<p><b>Supervision (A. 92):</b></p> <p>(1) The supervision against the implementation of the placement and protection of migrant workers is carried out by the government agency in charge of employment at the central, provincial, and <i>kabupaten/kota</i> levels.</p> <p>(2) The implementation of the supervision mentioned above will be further stipulated by a government regulation.<sup>a</sup></p>	---	---	---
<p><b>Supervision report (A. 93):</b></p> <p>(1) The government agency in charge of employment at the central, provincial, and <i>kabupaten/kota</i> levels must report the implementation of the supervision within their jurisdiction to the minister.</p> <p>(2) The mechanism for reporting as mentioned above will be further stipulated in the <i>permenakertrans</i>.</p>	---	---	---

Source: Law No. 39/2004; Permenakertrans No. PER.19/MEN/V/2006; Permenakertrans No. PER.18/MEN/IX/2006; Permenakertrans No. PER.14/MEN/X/2010.

Note: A. = Article.

<sup>a</sup>No government regulation has been issued since then.

In early 2008, the Blitar parliament agreed to include the *raperda* (*perda* bill) on migrant workers into the local legislation program (*prolegda*). Entering the 2008 Prolegda meant that the *raperda* would be discussed by the parliament and had to be legislated by 2008. A special committee was then formed to thoroughly discuss the *raperda* submitted by the NGOs. After several meetings with various stakeholders, the parliament approved the *perda* on 17 December 2008. The day after, on the International Migrant Day, which was on 18 December 2008, the *bupati* signed Perda No. 16/2008 on the Protection of Kabupaten Blitar's Migrant Workers in Foreign Countries.

After the signing and numbering of the *perda*, the legislating process should have been continued with the recording of the *perda* in the *kabupaten* legislation book. However, this was

not done by the *kabupaten* secretary.<sup>27</sup> Consequently, the *perda* could not be enforced. This certainly was ironic because in August 2009, the Blitar parliament won the autonomy award from the Jawa Post Institute of Pro-Otonomi (JPIP). The Institute regarded the Blitar parliament as having good initiatives in passing *perda* on the protection of migrant workers.

The reluctance to fully legislate the *perda* roots back to the fact that the *perda* came from the parliament's initiative. The executive, in this case the head of the Labor and Transmigration Agency, somehow felt excluded in the discussion (interview with several Labor and Transmigration Agency officials). An NGO activist that was interviewed denied this complaint. He said that the *kabupaten* agency was always invited to the meetings. This problem occurred because during the policy process, which took place from 2003 to 2008, the head of the Labor and Transmigration Agency changed several times. As a result, the successors felt left out of the process (interview with Tukimin, an SBMB activist, male, about 40 years old, 21 June 2010).

### Box 2

#### The Pamphlet of Kabupaten Blitar's Labor and Transmigration Agency

Kabupaten Blitar's Labor and Transmigration Agency has taken the dissemination of information to migrant workers seriously.<sup>a</sup> In 2009, the Labor and Transmigration Agency had printed pamphlets that specifically alerted migrant workers to some unscrupulous practices of the intermediaries or irresponsible PPTKIS and recommended some steps to avoid them. First, the migrant workers were advised to check the legality of the PPTKIS: whether it has a valid job order, valid recommendation issued by the Technical Working Unit of Placement and Protection Service for Indonesian Migrant Workers (UPT P3TKI), and valid registration at the Labor and Transmigration Agency. Second, they were advised to check the ID card of the field staff of the PPTKIS. Third, they were advised not to pay any money until the departure was firm. They can consult the Labor and Transmigration Agency regarding the payment. Fourth, they were advised to get a confirmation letter of the documents they had submitted from the PPTKIS. Finally, working overseas is only allowed for those registered at the Labor and Transmigration Agency and for those above 21 years of age wishing to work as overseas domestic helpers.

In the pamphlet, the Labor and Transmigration Agency also warned the migrant workers about the danger of trusting intermediaries, who brought about countless cases of deception and fraud. Specifically, if Japan and Korea are the destination countries, the migrant workers have to understand that the placement is only carried out through the central government, not the PPTKIS. The placement for Japan is carried out through an apprentice program and mainly targets men who have gone through a very tough selection process. In addition, only female nurses passing diploma and undergraduate courses are eligible to work in Japan. Prospective migrant workers without these qualifications should not have any false hope due to false promises made by intermediaries. The Labor and Transmigration Agency further informed the migrant workers that the PPTKIS in charge of Korea is the one appointed by the central government and only those who have passed a Korean language test are eligible.

The Labor and Transmigration Agency encourages the migrant workers to look for more information by:

- a) visiting <http://blitarkab.go.id>;
- b) sending an email to [disnakertrans\\_kabblitar@yahoo.co.id](mailto:disnakertrans_kabblitar@yahoo.co.id);<sup>b</sup>
- c) visiting the Labor and Transmigration Agency at Jl. Imam Bonjol No. 7; or
- d) calling the Labor and Transmigration Agency at 0342-8001407.

Source: Kabupaten Blitar's Labor and Transmigration Agency, 2009.

<sup>a</sup>In the four research areas, only Blitar was observed to distribute pamphlets.

<sup>b</sup>It might mean [disnakertrans\\_kabblitar@yahoo.co.id](mailto:disnakertrans_kabblitar@yahoo.co.id).

Furthermore, the Labor and Transmigration Agency at the *kabupaten* level argued that the *perda* had some substantial flaws. This was corroborated by the official letter of the Governor of

<sup>27</sup>He was the one who gave the number to the *perda*, but, ironically, he refused to include the *perda* in the *kabupaten* legislation book.

East Java following their assessment of the substance of Blitar's *perda*.<sup>28</sup> The letter recommended that the title of the *perda* be changed by taking into account the substance of the *perda*, mostly covering protection commission. Therefore, in their opinion, the proper title of the *perda* should have been "Protection Commission".

Following the provincial assessment, legal analysis was also carried out at the *kabupaten* level. Widiarto (2010) presented some findings against the *perda*. First, the title of the *perda* was considered incorrect. The *perda* titled "Protection of Kabupaten Blitar's Migrant Workers in the Foreign Countries" implies that the local government has the power to deal with foreign countries, which is against its jurisdiction. This implication is also clear in Article 22 (1) of the *perda*, which requires the Labor and Transmigration Agency to supervise Blitar migrant workers working overseas, a task that cannot be performed by the agency. Second, the provisions on the protection commission have not been integrated with the rest of the provisions in the *perda*. On the contrary, it has raised new provisions on the existence of shelters for migrant workers. Third, there exists a contradiction in the party being in charge of protection. Article 27 (1) stipulates that the protection commission is in charge of protection, while Article 14 (1) states that the PPTKIS is the one that is responsible for the protection of migrant workers. Fourth, some provisions, such as those on class action, should have been ruled by a law and not by the *perda*.

At present, the parliament is trying to revise the *perda* based on the assessment of the provincial Labor and Transmigration Agency. NGO activists are supporting this process, but since the financial support from UNIFEM has ended, it has to use its own limited resources.

#### 4.2.2 Kabupaten Lombok Barat<sup>29</sup>

In 2006, local NGOs—Koslata and the Association of Five Ideas (PPK)—were committed to assisting the local government to proceed with the protection *perda*. Funding for this initiative came from the European Union and Yayasan TIFA. The legal drafting process was done through a series of discussions at different levels. At the village level, PPK held discussions with prospective and former migrant workers, and their families, and relevant stakeholders at the village level. Five migrant-source villages were picked out purposively, each conducted ten thematic discussions where problems were mapped and clustered, and their solutions were formulated.

At the *kabupaten* and provincial levels, ten discussions were also held to follow up the findings at the village level. The discussions involved various stakeholders and the legal drafting team consisting of (i) Koslata and PPK, (ii) the Legal Department of the *Bupati* Office, (iii) head of the Labor and Transmigration Agency, and (iv) academics. The inclusion of these stakeholders was to ensure their sense of ownership. Finally, a public consultation was conducted with various PPTKIS before the public hearing with the local parliament. Lobbying the local parliament members was very important to convince them to finally agree with the *raperda*.

The *perda* was legislated on 14 March 2008. However, the implementation of the *perda* was hampered by the *kabupaten* executive election and then the national elections. Following the *kabupaten* executive election, the administration was reshaped. Unfortunately, the selected head of the Labor and Transmigration Agency was a former *camat* (subdistrict head) who knew nothing about employment, let alone migrant workers. This worsened the implementation of the *perda*.

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<sup>28</sup>Letter from the provincial secretary on behalf of the Governor of East Java No. 188/11173/013/2009 dated 31 July 2009 on the Assessment of Blitar's *Perda* No. 16/2008.

<sup>29</sup>Interviews with Susilo (24 October 2010) and Rita (21 October 2010).



### 4.2.3 Kabupaten Ponorogo

From 2005 to 2006, Plan International, together with Social Protection Labor Network (JKPS) Cahaya, a local NGO, took the initiative to draft a protection *perda*.<sup>30</sup> The overall process of legal drafting brought together some NGOs, local government officials, parliament members, and academics.

In 2006, the *perda* had come to its fourth revision. An official of the Office of Women's Empowerment and Child Protection (KP3A) explained that the cost had reached no less than Rp100 million, yet JKPS Cahaya failed to convince the Labor and Transmigration Agency as well as the local parliament to agree with the draft.<sup>31</sup> JKPS Cahaya held several demonstrations to push the local government to react. However, the Labor and Transmigration Agency did not give any support to follow this up to the local parliament. At the same time, the local parliament was not interested in the substance of the *perda*. Therefore, the *raperda* was left unused until now.

### 4.2.4 Kabupaten Lombok Tengah

In Kabupaten Lombok Tengah, the preparation for the legal drafting began in 2004 when PPK, a local NGO, approached the Labor and Transmigration Agency to formulate the protection *perda*. Funding from this initiative came from TIFA Foundation.

From 2005 to 2006, the discussion was intensified until the *raperda* reached its final version. However, the bill was rejected by the local parliament.<sup>32</sup> One important reason for the rejection was that the substance of the *perda* was duplicating Law No. 39/2004 and, therefore, it would be of no urgent use.<sup>33</sup>

## 4.3 Comparing the Outcomes and Enabling Conditions in the Four Kabupaten

### 4.3.1 Local Initiatives to Pass Protection *Perda*

To retrieve information from the four visited *kabupaten*, Table 7 was constructed. Some important highlights of the table are as follows. First, the duration of the policy process that is too short, such as one year in the case of Ponorogo, is certainly insufficient to advocate the protection *perda*. However, if it is too long, the policy process will encounter very frequent transfers of government staff which can significantly delay the success of the policy process and demotivate the stakeholders. This is the case with Blitar where the successors were not familiar with the passed stages of the policy process.

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<sup>30</sup>Interviews with staff from PUSAR: Rizki (male, about 30 years old, 30 June 2010) and Rian (male, about 25 years old, 30 June 2010). The interview with JKPS Cahaya could not be carried out, as its office had moved out of Ponorogo. Even worse, Rizki said that JKPS Cahaya had closed its operation. Nevertheless, one of its former staff was invited (through PUSAR) to an FGD at the *kabupaten* level, but he left the discussion afterwards for an unknown reason.

<sup>31</sup>Interview with Ani, an official of KP3A of Kabupaten Ponorogo (female, about 30 years old, 28 June 2010).

<sup>32</sup>There are two versions of stories about who rejected the draft. According to an interview with Jainal (male, about 40 years old, 29 October 2010), an official of the Legal Department of the *Bupati* Office of Lombok Tengah, the local parliament was the one that rejected the law. However, according to an interview with Yudha, an official of Kabupaten Lombok Tengah's Labor and Transmigration Agency (male, about 50 years old, 29 October 2010), it was the executive who disagreed with the idea of having a protection *perda*. He said that he was one of the team members that criticized the *raperda*.

<sup>33</sup>This information came from Yudha (29 October 2010).

Second, the *raperda* of Kabupaten Ponorogo and Kabupaten Lombok Tengah that we reviewed reveal that they both fall into type-3 *perda* of our typology. In other words, both regulate the placement rather than the protection of migrant workers. Since the *raperda* was similar to Law No. 39/2004, the executive and legislative bodies in these two *kabupaten* were not interested in and did not show commitment to passing them.<sup>34</sup>

Third, Kabupaten Blitar's *perda* is the only local initiative which comes from the legislative side. Interviews with local parliament members disclosed that their involvement started only in 2006, three years after the onset of the protection *perda* project.<sup>35</sup> Engagement with the local parliament was a smart solution, as the local government did not seem to agree with the protection *perda* in the first place. Unfortunately, even after the approval from the parliament, the *perda* could not be enforced, as it was not recorded in the *kabupaten* legislation book.

**Table 7. General Information on Local Initiatives to Pass Protection *Perda***

	Blitar	Lombok Barat	Ponorogo	Lombok Tengah
Donor agency	UNIFEM	European Union, and Yayasan TIFA	Plan International	Yayasan TIFA
Advocating NGOs	SBMB, P3BM	Yayasan Koslata, PPK	JKPS Cahaya	PPK
Establishment of NGO	SBMB in 2002	Yayasan Koslata in 1989, PPK in 1988	Unknown, but dissolved in 2009	PPK in 1988
Duration of policy process	2003–2008	2006–2008	2005–2006	2004–2006
Legal drafting process	2007–2008	2006–2007	2005–2006	2005–2006
<i>Prolegda</i>	2008	2007	Failed to be included in the 2007 <i>Prolegda</i> . Rejected by both the executive and legislative bodies	Failed to be included in the 2006 <i>Prolegda</i> . Rejected by both the executive and legislative bodies
Legislation date of <i>perda</i>	18 December 2008 <sup>a</sup>	14 March 2008	---	---
Initiator of <i>perda</i>	Legislative's initiative	Executive's initiative	Supposed to be the executive's initiative	Supposed to be the executive's initiative
Substance of <i>perda</i> <sup>b</sup>	Protection	Protection	Placement	Placement

<sup>a</sup>This was the date when the *bupati* signed the *perda*.

<sup>b</sup>Author's review.

<sup>34</sup>This information came from an interview with Yudha (29 October 2010). The same reason was also mentioned by staff members of Kabupaten Blitar's Labor and Transmigration Agency, namely Kadir (male, about 50 years old, 21 June 2010), Iwan (male, about 40 years old, 21 June 2010), and Bambang (male, about 40 years old, 21 June 2010), who rejected the protection *perda*. However, the statement "the *perda* is just copied and pasted from Law No. 39/2004" needs further verification.

<sup>35</sup>Interviews with local parliament members: Slamet (male, about 40 years old, 22 June 2010) and Titik (female, about 40 years old, 22 June 2010).

### 4.3.2 Internal Factors

Table 8 compares four main stakeholders during the policy process: the local government, local parliament, advocating NGOs, and the PPTKIS. The role of the local government, comprising the Labor and Transmigration Agency, Legal Department of the *Bupati* Office, *kabupaten* secretary, and head of the Local Development Planning Agency (Bappeda), is particularly important during the process, as it is the implementer of the *perda*.<sup>36</sup> Therefore, the capacity of NGOs to convince them to join the policy process is very important.<sup>37</sup> On the other hand, it is also crucial to get the parliament members' approval of the *raperda*, to bring the *raperda* into the *prolegda*, and to legislate it.

**Table 8. General Information on Internal Factors: Stakeholders' Perception**

	Blitar	Lombok Barat	Ponorogo	Lombok Tengah
Commitment of the local government	Low	High	Low	Low
Commitment of the local parliament	High	Moderate	Low	Low
Capacity of the advocating NGOs	Good capacity to formulate legal drafting. Capacity to lobby the executive body is not sufficient.	Good capacity to formulate legal drafting. Good capacity to lobby the executive and legislative bodies.	Not known	Good
Trust, relationship, and interaction	Distrust, low interaction, in particular between the NGO and Labor and Transmigration Agency. Good relationship between the NGO and parliament members	Trust, intensive interaction	NGO not well known to stakeholders in Ponorogo. Low interaction between the NGO and other stakeholders	Trust but not intensive interaction
Position of the advocating NGOs	Contestation	Engagement	Contestation <sup>a</sup>	Engagement
Physical distance between the NGO and the other stakeholders	Close	Close	Far	Far
Intervention from the PPTKIS	High	Unaware	Some members of the parliament own the PPTKIS	Unaware

<sup>a</sup>JKPS Cahaya held demonstrations several times, according to staff members of the Center for the Study of Advocacy for the People (PUSAR), namely Rizki (30 June 2010) and Rian (30 June 2010).

<sup>36</sup>These officials were included in the legal drafting team.

<sup>37</sup>The policy process in Kabupaten Lombok Barat was more systematic. Both Koslata and PPK were the “old players” in the development industry in NTB. Koslata is well known to have the capacity as an advocating NGO which has partnerships not only with the executive body but also with the legislative body, and not only at the *kabupaten* level but also at the provincial level. Therefore, resistance of their partners was minimal. In the case of Kabupaten Lombok Barat, the process of advocacy at the *kabupaten* level was done by Koslata, whereas the process of collecting aspiration from the village level was done by PPK, which has the capacity as a community empowerment NGO.

In the policy process, commitment is a must. Koslata and PPK, in particular, chose Lombok Barat to advocate the protection *perda* because they were certain that the *Kabupaten* Government of Lombok Barat had high commitment to protecting the migrant workers.<sup>38</sup> The commitment of the local government as well as the local parliament does not, however, stand on its own. It depends on the substance of the *raperda*, such as the case of Lombok Tengah, and also on the NGOs' understanding of the substance as well as their technical capacity to lobby and convince both the local government and the parliament to pass the *perda*.

On the other hand, low commitment can also arise from a lack of willingness to protect migrant workers and a lack of awareness of gender issues among policymakers and bureaucrats.<sup>39</sup> Overseas migration involves social costs such as weaker family cohesion and increased divorce rate and juvenile cases that are borne by individuals, families, and the society in general; thus, linking gender with overseas migration. Moreover, with the majority of Indonesian migrant workers being women, they tend to be blamed for the emergence of these costs.<sup>40</sup> Because local governments and parliaments lack awareness of these gender issues, passing a protection *perda* can help minimize the aforementioned costs.

At the same time, this already low commitment is made worse by the general mindset of the local government that the placement and protection of migrant workers is the task of the central, and not the local, government. For example, an official interviewed believed that the local government at the time being could not arbitrarily establish the *perda* without the approval of the central and provincial governments.<sup>41</sup> In the case of Lombok Tengah, an informant from the Labor and Transmigration Agency was concerned that the *perda* would disturb the migration outflow, which could further cause a high unemployment rate at the *kabupaten* level.<sup>42</sup> The other informants said that the local government would not be able to protect the migrant workers in the destination countries, as it fell beyond its jurisdiction.<sup>43</sup> In addition, many fear the insufficient budget and capacity to carry out the mandate of the *perda*.<sup>44</sup> In Lombok Barat, an informant from PPK was concerned that the local budget (APBD) would not be able to accommodate an increase in budget due to the increase in roles and responsibilities.<sup>45</sup> In all the visited *kabupaten*, it was observed that the Labor and Transmigration Agency appeared to have only a limited budget, which could be the main reason for its low commitment and the reason to maintain status quo.

Furthermore, the position that the advocating NGOs take in their relation with local counterparts is important. In particular, this relationship must not end once the *perda* is legislated. Instead, it should remain during the implementation of the *perda*. SBMB and P3BM tend to take a

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<sup>38</sup>Interview with Susilo (24 October 2010).

<sup>39</sup>Interview with Ani (28 June 2010).

<sup>40</sup>Interview with Ahmad, an official of the Religious Court of Kabupaten Blitar (male, about 50 years old, 22 June 2010).

<sup>41</sup>Interview with Gatot, an officer of the Legal Department of the *Bupati* Office of Kabupaten Ponorogo (male, about 50 years old, 28 June 2010); Kadir (21 June 2010), Iwan (21 June 2010), and Bambang (21 June 2010).

<sup>42</sup>Interview with Yudha (29 October 2010).

<sup>43</sup>Interviews with Jainal (29 October 2010), Kadir (21 June 2010), Iwan (21 June 2010), and Bambang (21 June 2010).

<sup>44</sup>Interview with Dedi, an official of the Bappeda of Kabupaten Ponorogo (male, about 50 years old, 28 June 2010).

<sup>45</sup>In 2010, the budget of the protection commission came from the Revised APBD, the sustainability of which was in question.

contestation (contesting) position, i.e., to push from the outside, while NGOs in NTB are likely to engage and work together with local partners. We observe that in East Java, frictions between NGOs and the local government are still apparent. In NTB, particularly in Lombok Barat, the local government is quite open to NGO participation in policymaking thanks to the development of trust over some decades.<sup>46</sup> Trust is, therefore, vital to the success of *perda* legislation.

Additionally, the physical distance between the advocating NGOs and the local counterparts is another factor that influences the interaction of both parties. In the case of Lombok Tengah, PPK is located in Mataram, about two hours of travel from Praya, the capital city of Lombok Tengah. On the contrary, in the case of Lombok Barat and Blitar, the stakeholders are physically close to each other.

### **Box 3** **In Search of Justice: the Dilemma of Litigation**

Effective and good governance is measured by, among other things, the extent to which the law is enforceable. Overseas employment has been well known to apply lenient sanctions against violators of the law. This is in line with the spirit of Law No. 39/2004. Article 85 of the law stipulates that in disputes between the migrant workers and the PPTKIS, both should prioritize finding a peaceful solution. In addition, one or both parties should seek support from the central, provincial, or local Labor and Transmigration Agency. The law says nothing about using legal action to proceed. Because of this, mediation has been the approach taken towards cases and complaints of the migrant workers.

At the same time, litigation does not serve as a plausible alternative either. Adding to the workers' plight is the long and winding road of a lawsuit. It certainly squeezes money out of them, let alone energy and time. Again, Law No. 39/2004 has been blamed as the cause of the lengthy process of litigation. Articles 21 and 23 of the law stipulate that the headquarters will be the one in charge of any misdeed committed by its branches. Since 90% of the PPTKIS are registered in Jakarta, the victims have to start the legal case from their village and chase the PPTKIS to Jakarta. The provisions in the law and the fact that 90% of the PPTKIS are in Jakarta have made the supervision of the PPTKIS by the local government extremely difficult. On the other hand, the PPTKIS would definitely choose to locate themselves as far as possible from the migrant-sending *kabupaten/kota* and villages and, therefore, as far as possible from whatever abuses their branches have committed.

Furthermore, completing the legal documents is always a drawn-out process, although this is not typically the case for overseas employment cases. Normally, the document completion process takes two years before it gets approval to start the trial. In most cases, the documents submitted are rejected twice or even more before it gets approval. Yet, the onset of court cases can be terminated simply because the accused flees overseas. Also, in a case that involves below-age migrant workers, the police rarely execute the trafficking law whose punishment could triple common crime cases, such as kidnapping. Therefore, even if the court eventually incriminates the violator, the charge would be soft. For many migrant workers and their families, the time, energy, and money put into seeking justice in this way is just not worth it.

There are other reasons why most workers choose to just drop their case. First is because their relatives are part of the charge. For example, the parents brought a case of child trafficking to the courts only to learn later that the uncle was involved in the case. Second, many would draw themselves out after being given financial compensation from the PPTKIS. For many victims, getting compensation might be better than risking the uncertainty of legal action.

*Source:* Interview with Bobby (28 October 2010).

The involvement of the PPTKIS is another issue to consider. The advocating NGOs in Lombok Barat deliberately excluded the PPTKIS from the policy process. The reason was straightforward: Almost all the PPTKIS were profit-oriented and would only hamper the

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<sup>46</sup>The history of NGO movement in NTB dates back to 1982 (Dahlan, 2000), which is much earlier than the NGO movement in East Java.

overall process. Koslata and PPK unanimously agreed to exclude them in the legal drafting. The PPTKIS were only invited to the public consultation at the end of the process.<sup>47</sup> Because of this, the PPTKIS were not aware of the *perda* in Kabupaten Lombok Barat.<sup>48</sup> In Ponorogo, the intervention of the PPTKIS was serious. In 2006, the *raperda* was submitted to be included in the 2007 Prolegda. Many of the parliament members who were known to own a PPTKIS and to have relatives owning PPTKIS rejected the *raperda*.<sup>49</sup> In Blitar, the PPTKIS were against the discussion of the *raperda* in the parliament (The Institute for Ecosoc Rights and Trade Union Rights Center, 2008b). They threatened to move out of Blitar if the *raperda* was passed.

However, compared to Kabupaten Lombok Barat, the *perda* of Kabupaten Blitar stipulates more demanding roles and responsibilities of the PPTKIS (Table 9). Therefore, their resistance in Blitar is stronger than in Lombok Barat.

**Table 9. Roles and Responsibilities of the PPTKIS in Kabupaten Blitar and Kabupaten Lombok Barat**

Kabupaten Blitar (Perda No. 16/2008)	Kabupaten Lombok Barat (Perda No. 5/2008)
To recruit and select the workers; to disseminate information about the work, requirements, and obligation of the workers (A. 6)	To establish a branch office in NTB; to establish a service office in Lombok Barat (A. 4)
To provide shelter during training; to own a training center to improve skills and language; to compensate the workers in case of departure cancellation (A. 13)	To appoint field officers (either staff or nonstaff); to equip the field officers with an ID card legalized by the <i>kabupaten</i> Labor and Transmigration Agency (A. 5)
To monitor and protect workers in the destination country; to take care of sick or deceased workers; to organize the return of the workers (A. 14)	To submit a written report on the progress of migrant workers in the destination countries biannually (A. 16)

Source: Perda No. 16/2008 of Kabupaten Blitar; Perda No. 5/2008 of Kabupaten Lombok Barat.

Note: A. = Article.

### 4.3.3 External Factors

External factors are factors that are beyond the control of the stakeholders, including election time, transfer of government staff, finance from donor agencies, and other incentives (Table 10).

<sup>47</sup>Interview with Susilo (24 October 2010).

<sup>48</sup>Interviews with the PPTKIS staff in Kabupaten Lombok Barat, namely Didi (male, about 30 years old, 21 October 2010), Lusi (female, about 50 years old, 22 October 2010), and Sapto (male, about 40 years old, 26 October 2010).

<sup>49</sup>Interview with Ani (28 June 2010).

**Table 10. General Information on External Factors: Stakeholders' Perception**

	Blitar	Lombok Barat	Ponorogo	Lombok Tengah
Timing of the legislative election	5 April 2004 6 March 2009	5 April 2004 6 March 2009	5 April 2004 6 March 2009	5 April 2004 6 March 2009
Timing of the executive election	27 November 2005 9 November 2010	20 October 2005 30 October 2008 (first round) 15 December 2008 (second round)	20 June 2005 3 July 2010	27 June 2005 7 June 2010 (first round) 23 September 2010 (second round)
Transfer of staff	Very frequent Newcomers not fitting the job	Frequent Newcomers not fitting the job	Moderately frequent Newcomers not fitting the job	Very frequent Newcomers not fitting the job
Finance from donor agencies	Sufficient; donor could finance long policy process.	More than sufficient The policy process involved intensive and extensive discussions at the village and <i>kabupaten</i> levels, lobby, public consultation, and campaign.	Insufficient, no more effort after rejection	Insufficient, no more effort after rejection
Other incentives or disincentives	The local parliament has the incentive to win the Jawa Post Autonomy Award.	---	---	---

The importance of external factors is very clear in the case of Blitar and Lombok Tengah, where political events give advantage to the political process and enhance the approval of *perda* (Table 11).

**Table 11. Political Events in Kabupaten Blitar and Kabupaten Lombok Barat**

Political Event	Timing	
	Kabupaten Blitar	Kabupaten Lombok Barat
<i>Prolegda</i>	2008	2007
<i>Perda</i> legislation	18 December 2008	14 March 2008
Legislative election	6 March 2009	6 March 2009
JPIP Award	August 2009	-

In Blitar, the *prolegda* took place in 2008. The next “supposed” legislation date of the *perda* was 18 December 2008, which was coincidental with the International Migrant Day. The incumbent members of parliament had enough to prove their support to the migrant workers prior to the legislative election, which was on 6 March 2009. In Lombok Barat, the *perda* entered into the *prolegda* in 2007 and was officially legislated on 14 March 2008, prior to the legislative election on 6 March 2009. In migrant-source *kabupaten*, the incumbents could use policies in favor of migrant workers to gain vote from them. Therefore, in these two *kabupaten*, the timing of the policy process gave incentive to the legislative members to commit themselves to the legislation of the *perda*.

Unfortunately, the favorable election timing in Ponorogo and Lombok Tengah did not concur with the policy process. The legislative members in Blitar were also encouraged by the Autonomy Award of the Jawa Post Institute. The award was given to the local parliament after completing the policy process of protection *perda*, which was the legislative's initiative.

The election time might be a good incentive to the legislation. However, to NGOs in Lombok Barat, the election time was seen as a barrier to implementation. The *perda* of this *kabupaten* had been legislated on 14 March 2008, but due to the election events, progress of its implementation was very slow.<sup>50</sup> Following the election, the administration was changed and, therefore, transfers of staff took place. The new staff members chosen were not necessarily those who understood the issues in their new jobs. Again, this had impeded the implementation.

The transfers of government staff were unanimously considered to weaken public service delivery (see Box 4). This was the concern of not only NGOs but also the government staff themselves. The transfers not only happen too often but also do not consider the qualifications of the new staff member. Eventually, this reshaping of administration only weakens the public services, making people suffer, instead of advancing them. Indeed, no one benefits from these unnecessary transfers of staff, except the rent seekers.

Last but certainly not least, the financial support from donor agencies is apparently a very important element in the policy process. The local innovative idea to protect migrant workers at the migrant-sending *kabupaten* requires funding. Without sufficient funding, local NGOs alone would not succeed. In the case of Ponorogo and Lombok Tengah, the duration of funding was very limited. Once the *raperda* was rejected to enter the *proledga*, the funding stopped. On the contrary, in Blitar, donors were able to extend their support so that the *raperda* could finally obtain approval from the legislative body.

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<sup>50</sup>Interview with Rita (21 October 2010).



#### Box 4

### Transfers of Staff at the Local Level: A Damaging Aspect of Decentralization

Transfers of staff have become a regular phenomenon across Indonesia ever since a direct *pilkada* (*kabupaten/kota* executive election) was introduced in 2004. *Pilkada* has changed the supposedly neutral bureaucracy of *pilkada* into a political one. As a vehicle for power and, hence, financial gain, *pilkada* involves numerous candidates and, of course, the incumbent. Prior to *pilkada*, the incumbent *bupati* and his/her success team normally scrutinize the loyalty of his/her staff. They then rotate the staff, giving the prosperous sectors or occupations to the ones they trust most. This game becomes even more complicated if the deputy *bupati* also registers himself/herself to be a candidate. This is because the direct *pilkada* causes rivalry between the *bupati/walikota* (*kota* head) and his/her deputy a year or two prior to the election time.

Why, then, should the bureaucracy, in this case the head of the local Labor and Transmigration Agency, take the side of any of the *pilkada* candidates? The answer is simple: You are damned if you take sides and damned all the same if you do not. Transfers of staff will take place no matter what. In this case, the optimal solution is eyeing the most possible candidate and demonstrating one's loyalty to him/her. It can be said that, in practice, this is, therefore, nothing less than gambling.

Our informants have observed that lately there has been a greater as well as worrying tendency of transfers of staff to happen. In the first direct *pilkada*, only echelon-I officials, which were heads of local labor and transmigration agencies, were transferred. Now, it has included echelon-II and even echelon-III officials.

Unfortunately, the qualifications of the staff in these new positions are the last factor considered. One can find the *kabupaten* health agency to be occupied by a person with a literature background. Or, the agency in charge of gender issues is chaired by an official who used to deal with livestock. Even more unfortunately, the leaving staff normally carry with them all the official data for heaven-knows reasons. There is no turnover process and, therefore, their successors have to start from square one in building the new database. Imagine how this impacts public service delivery!

*Source:* Interviews with staff members of Asosiasi Buruh Migran Bumi Gora of Lombok Tengah: Ana (female, about 40 years old, 29 October 2010) and Pipit (female, about 30 years old, 29 October 2010); a staff member of BPS of Kabupaten Lombok Tengah: Nono (male, about 40 years old, 29 October 2010); Yudha (29 October 2010); and Bobby (28 October 2010).

## V. CONCLUSION AND RECOMMENDATIONS

### 5.1 Conclusion

Overseas employment has been in the grey area as to whether it should be centralized or decentralized. Two most important legal frameworks—Law No. 39/2004 and Government Regulation No. 38/2007—both characterize centralized governance, with placement, rather than protection, of migrant workers dominating the provisions. In terms of placement, Law No. 39/2004 assigns the BNP2TKI, a vertical body with many units of service centers and posts at the provincial and *kabupaten/kota* levels under its authority, to handle the G-to-G deployment (Articles 10 and 92 (2a)) and the PPTKIS to take care of the P-to-P deployment (Article 10). Government Regulation No. 38/2007 assigns the central government the tasks of giving numerous permits and licensing PPTKIS. In terms of protection, Law No. 39/2004 is in charge of the preplacement protection (Article 82).

With this centralized management, the central government faces a lot of difficulties in dealing with 80% of the problems that occur in the migrant-sending *kabupaten/kota* and villages. This is true because Law No. 39/2004 is considered to be particularly weak in supervision. First, supervisory roles are assigned to governments at all levels, including the local government (Article 92 (1)) and the BNP2TKI (Article 95). On the other hand, the delineation of authority between governments at all levels and the BNP2TKI is far from clear. Moreover, this triggers the question whether supervisory fund is also shared with *kabupaten/kota* where the BNP2TKI has no representatives, except the small service posts in 14 *kabupaten/kota*. Second, the provisions on supervision (Article 92 (3)) and supervisory mechanisms (Article 93) are yet to be completed. Law No. 39/2004 promises to issue the implementing legislation, but so far it fails to do so. Third, supervision becomes more difficult to carry out at the *kabupaten/kota* level, as the branch office could not be held responsible for any activities happening in the field (Article 23).

To add to these complications, Government Regulation No. 38/2007 gives even more intensive responsibilities, some of which are the tasks previously assigned by Law No. 39/2004 to the PPTKIS, to the local government, while some others are duties to support the central government's responsibilities which are not mentioned in Law No. 39/2004. This poses the following two questions: To what extent is the local government aware of and committed to performing these extended tasks? And is it capable of performing them?

To answer these questions, one should refer to the performance of *kabupaten/kota* in the decentralization era. Not surprisingly, some *kabupaten/kota* believe that autonomy has opened new opportunities to take initiatives and improve public services. However, many also see autonomy as a vehicle to collect local revenues by means of issuing *perda* on local taxes and *retribusi*. Indeed, employment is one of the areas where *kabupaten/kota* can extract levies. Many of the *perda* related to overseas employment in fact violate Law No. 28/2009 on Local Taxes and *Retribusi*. They also violate Law No. 13/2003 on Labor, and Presidential Decree No. 36/2002 on the Ratification of ILO Convention No. 88 on the Organization of Employment Service. Yet, for many *kabupaten/kota*, the freedom to issue *perda* has been wrongly understood as a symbol of independence from the central government.

The research team collected 127 *perda* related to overseas employment from 115 *kabupaten/kota*. In order to map them according to the *kabupaten's/kota's* number of migrant workers, the team constructed the following typology: type-1 *perda*, that is, *perda* on general

employment which is extractive; type-2 *perda*, that is, *perda* on general *kabupaten/kota* revenue which is extractive; type-3 *perda*, that is, *perda* on placement procedure which is nonextractive; and type-4 *perda*, that is, *perda* on protection which is nonextractive. The team found that out of the 127 *perda*, 81% fall in type-1 *perda*, 14.2% type-2 *perda*, and 2.4% type-3 and type-4 *perda*. In 82 migrant-source *kabupaten/kota*, only 3 *kabupaten* (3.7%) have protection *perda* (type-4 *perda*).

The team also performed a mapping analysis where it found that migrant-source *kabupaten/kota* issue both a higher number and variety of *perda* related to overseas employment. The team found that some *kabupaten/kota* with very low or even no migrant workers passed type-1 and type-2 *perda*. These are transit *kabupaten/kota* that border the neighboring receiving countries, such as Malaysia, Brunei, and Singapore. Many prospective migrant workers and the PPTKIS require administrative services from the government of these *kabupaten/kota*. At the same time, it is not surprising if irregular migration activities also take place in these *kabupaten/kota*. Interestingly, this mapping exercise found that our typology is not necessarily mutually exclusive. *Kabupaten/kota* that passed protection *perda*, such as Sumbawa and Lombok Barat, passed extractive *perda* as well. This implies that these *kabupaten* might have had good intention to protect their migrant workers but, at the same time, charged the workers either directly or indirectly, which is against the law. The only mutually exclusive case was Blitar, which only passed protection *perda* and none of the extractive types.

From the mapping analysis, the team also learned that the majority of migrant-source *kabupaten/kota* are not ready to commit themselves to protecting their migrant workers. However, some *kabupaten/kota* are. The team selected four *kabupaten*—Blitar, Ponorogo, Lombok Barat, and Lombok Tengah—for the team's benchmarking study. All of them had been given technical assistance through NGOs to formulate protection *perda*. Only Blitar and Lombok Barat managed to pass the *perda*. Ponorogo and Lombok Tengah were not ready to do so.

The question is what makes some *kabupaten/kota* able to pass the protection *perda*. In order to understand this phenomenon, the team looked at the internal factors, namely the stakeholders and the relationships among them, and the external factors which are out of the control of the stakeholders.

The field research showed that each case is unique. That is why the outcome cannot be explained in a standard model that applies for each observed *kabupaten*. The duration of the policy process, for example, was so short for Ponorogo that it appeared to have been insufficient to pass the *perda* and was so long for Blitar that it concurred with transfers of staff that took place several times, even if the *perda* was finally issued. However, the optimal duration for Lombok Barat, which was two years, turned out to be not optimal for Lombok Tengah.

The substance of the *perda* was one of the reasons why the Government of Kabupaten Lombok Tengah decided not to proceed with the insertion of the *raperda* into the *prolegda*. Apparently, its similar substance to the substance of Law No. 39/2004 could not attract the attention of the stakeholders. However, the substance of the protection *perda* in Blitar was innovative and became the reason why the local government and the PPTKIS were resistant to it.

The advocating NGOs in Blitar and Ponorogo took the position of policy contestation with Blitar being the success story, thanks to the willingness of the local parliament to tap this aspiration, and Ponorogo being a complete failure. In the case of Lombok Barat, the position

of policy engagement of the NGOs proved to be more effective, while the opposite took place in Lombok Tengah.

The intervention of the PPTKIS was clear in East Java, resulting in the policy process being disturbed. In Ponorogo, the PPTKIS was known to have blocked the inclusion of the *raperda* into the *prolegda* through members of the parliament who own a PPTKIS or are closely related to the owner of the PPTKIS. In Blitar, the intervention of the PPTKIS could be counterbalanced by the high commitment of the members of the parliament and, therefore, the *raperda* could be approved. In NTB, the PPTKIS was not aware of the *raperda*. With this favorable context, the *perda* in Lombok Barat succeeded to be legislated, but not in Lombok Tengah.

In some cases, the timing of election at the *kabupaten/kota* level turned to be advantageous to the approval of the *perda*. This was the case for Blitar and Lombok Barat, but not for Ponorogo and Lombok Tengah. However, the timing of election could also be detrimental to the implementation of *perda*. In Lombok Barat, the legislated *perda* had to wait until the election events were over before it could be implemented.

Apart from the above-mentioned factors, we also found that the (i) trust and commitment of the local government and local parliament, (ii) strong capacity of NGOs, and (iii) strong support of the donor agencies are common factors that positively influence the success of *perda* legislation. The commitment of the local government, in particular, is essential during the implementation phase. Therefore, engaging them from the onset will enable an effective execution of the mandate of the *perda*. At the same time, transfers of government staff, which are taking place too often and without fit and proper consideration, are damaging the public service delivery, including the protection of migrant workers. Finally, the strong support of the donor agencies is equally essential since local NGOs alone would not be able to encourage the local government to protect the migrant workers.

## 5.2 Recommendations

With the above findings at hand, we can, therefore, propose the following recommendations. Law No. 39/2004 should be revised as soon as possible to ensure more effective roles of the local government in the protection of migrant workers. The revised law should clearly stipulate the local government's roles in supervision (Article 92) and supervisory mechanism (Article 93). Furthermore, the authority of the local government in protecting migrant workers can only be enhanced if Article 23 of the law is annulled. With this, the local government can then impose sanctions on the branch office of the PPTKIS in breach of the law and regulation.

The annulment of *perda* on *retribusi* that charge migrant workers should be carried out immediately. In addition, *perda* on *retribusi* that excessively charge the PPTKIS should also be reviewed, as the PPTKIS will eventually transfer the costs to the migrant workers. It is the responsibility of the local government to provide regular services to the workers free of charge as a reflection of its accountability to its citizens.

On the grounds that the central government has been changing policies and regulations very frequently, the migrant-source *kabupaten* should regularly be updated with the most recent legal framework. One should not assume that the local government will automatically be aware of the policy changes at the national level without proper socialization.

The migrant-source *kabupaten* bear the enormous tasks stipulated by both Law No. 39/2004 and Government Regulation No. 38/2007. For this reason, budget allocation to these *kabupaten* should be increased. At the same time, these areas—through their migrant workers—have long paid US\$15/worker to the central government for the so-called assistance and protection program. If the local government is to help improve the protection of migrant workers during the recruitment phase, it is more than justified if the central government adds its financial support to the local government. Also, it is only fair if the US\$15/worker fund is channeled back to its origin, namely the migrant-source *kabupaten*, to develop a sustainable protection mechanism and help reduce 80% of all the upstream problems. This is particularly applicable in the case of a *kabupaten* with a protection *perda*.

Lombok Barat, along with its protection commission which is considered as best practice, can serve as a good model. However, prior to its replication in other migrant-source *kabupaten*, the model needs to be tested first. The protection commission itself is an ad hoc body whose expertise in the long run has to be transferred to the labor and transmigration agency. In this regard, SMERU recommends a pilot project supporting the protection commission by means of the Specific Allocation Fund (DAK) and/or the Deconcentration Fund (*Dana Dekon*). To start with, Lombok Barat can be the pilot area.

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- Undang-undang No. 34 Tahun 2000 tentang Pajak Daerah dan Retribusi Daerah* [Law No. 34/2000 on Local Taxes and Retribusi] and its revision in *Undang-undang No. 28 Tahun 2009 tentang Pajak Daerah dan Retribusi Daerah* [Law No. 28/2009 on Local Taxes and Retribusi].

*Undang-undang No. 39 Tahun 2004 tentang Penempatan dan Perlindungan Tenaga Kerja Indonesia di Luar Negeri* [Law No. 39/2004 on the Placement and Protection of Indonesian Migrant Workers].

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*Peraturan Pemerintah No. 38 Tahun 2007 tentang Pembagian Urusan Pemerintahan antara Pemerintah, Pemerintah Daerah Provinsi, dan Pemerintah Daerah Kabupaten/Kota* [Government Regulation No. 38/2007 on the Division of Government Affairs between National and Subnational Governments].



# **APPENDICES**

## APPENDIX 1

### Governmental Responsibilities Related to Overseas Employment

**Table A1. Intergovernmental Responsibilities in Overseas Employment Based on Government Regulation No. 38/2007**

Central Government	Provincial Government	Local Government
1a. Assistance, control, and supervision of the placement of overseas employment	1a. -	1a. Information dissemination, registration, and selection of prospective migrant workers at the <i>kabupaten/kota</i> level
1b. Operator of the G-to-G placement of overseas employment	1b. -	1b. Supervision of recruitment of prospective migrant workers at the <i>kabupaten/kota</i> level
2. Formulating bilateral and multilateral agreements with destination countries	2. Assisting the implementation of bilateral and multilateral agreements at the provincial level	2. Assisting the implementation of bilateral and multilateral agreements at the <i>kabupaten/kota</i> level
3. Issuing (i) SIPPTKIS or SIUP <sup>51</sup> for PPTKIS, (ii) recruitment recommendation, (iii) SIP	3. Issuing (i) permit to establish branch office at the provincial level, (ii) recommendation to renew the SIPPTKIS	3. Issuing permit to establish branch office at the <i>kabupaten/kota</i> level
4. Document verification, issuing KTKLN, issuing certain passport recommendations for crash programs	4. Document verification at the provincial level	4. Issuing passport recommendation based on the domicile of the workers
5. Implementation of SSKO TKLN and supervision of protection fee compliance	5. Information dissemination on SSKO TKLN and supervision of protection fee compliance at the provincial level	5. Information dissemination on SSKO TKLN and supervision of protection fee compliance at the <i>kabupaten/kota</i> level
6a. Setting up of the standard of work contract, assessment of work contracts, validation of work contracts	6a. Socialization of the content of work and placement contracts at the provincial level	6a. Socialization of the content of work and placement contracts at the <i>kabupaten/kota</i> level
6b. -	6b. -	6b. Assessment and validation of placement contracts
7. Implementation of PAP	7. Assistance of PAP implementation	7. -
8a. Implementation of protection program, support, and advocacy for the workers	8a. Assistance, supervision, and protection of the workers at the provincial level	8a. Assistance, supervision, and monitoring of placement and protection of the workers at the <i>kabupaten/kota</i> level
8b. Setting up of the standard of shelters and BLK-LN.	8b. Issuance of permit for shelter at the provincial level	8b. Issuance of permit for shelter at the <i>kabupaten/kota</i> level
8c. Setting up of the standard and appointment of institutions related to placement (insurance companies, banks, medical clinics)	8c. -	8c. -
9. Assistance in homecoming and deportation at the national level	9. Assistance in homecoming at the arrival terminal at the provincial level	9. Homecoming service for migrant workers from <i>kabupaten/kota</i> .

<sup>51</sup>Trading license.

**Table A2. Comparison of the Local Government's Responsibilities**

<b>Roles and Responsibilities of the Local Government</b>	<b>According to Gov. Regulation No. 38/2007</b>	<b>According to Law No. 39/2004</b>
<b>Recruitment</b>		
Information dissemination	Local government	PPTKIS (A. 22)
Registration	Local government	Local government (A. 36 & A. 37) & PPTKIS (A. 22)
Selection of prospective workers	Local government	PPTKIS (A. 22)
Supervision of recruitment	Local government	Local government (A. 92)
<b>Bilateral and multilateral agreements</b>		
Assistance in the implementation	Local government	-
<b>PPTKIS permit</b>		
Permit to establish PPTKIS branch office at the <i>kabupaten/kota</i> level	Local government	Local government (A. 21 & A. 37)
<b>Document of the workers</b>		
Recommendation of passport application	Local government	Local government (A. 51)
<b>SISKO TKLN</b>		
Dissemination of SISKO TKLN	Local government	-
Supervision of protection fee (US\$15) compliance	Local government	-
<b>Work and placement contracts</b>		
Socialization of the content of work and placement contracts	Local government	-
Assessment and validation of placement contracts	Local government	- <sup>a</sup>
<b>Supervision and monitoring of workers</b>		
Assistance, supervision, monitoring of placement and protection of the workers at the <i>kabupaten/kota</i> level	Local government	Local government (A. 92)
Permit to establish shelters	Local government	Local government (A. 70)
<b>Homecoming</b>		
Homecoming service	Local government	PPTKIS (A. 75)

Note: A. = Article.

<sup>a</sup>Articles 38 and 54 of the law only state that the local government should be informed and be sent with a copy of the placement contract.

## APPENDIX 2

**Table A3. Typology of *Perda* Related to Overseas Employment**

TYPE-1 PERDA					
Quantile	#Migrant Workers	Kabupaten/Kota	Province	No./Year	Title of <i>Perda</i>
1	0	Kabupaten Berau	East Kalimantan	18/2002	Employment Service Fee <sup>a</sup>
1	0	Kabupaten Murung Raya	Central Kalimantan	22/2003	Employment Service Fee <sup>a</sup>
1	1	Kota Samarinda	East Kalimantan	10/2001	Employment Service Fee <sup>a</sup>
1	3	Kota Banjarbaru	South Kalimantan	10/2002	Employment Service Fee <sup>a</sup>
1	5	Kabupaten Bangka	Bangka Belitung	8/2003	Employment Service Fee <sup>a</sup>
1	9	Kabupaten Pelalawan	Riau Islands	12/2003	Workers' Placement and Protection Fee <sup>a</sup>
1	10	Kota Bontang	East Kalimantan	6/2002	Employment Service Fee <sup>a</sup>
1	10	Kota Bontang	East Kalimantan	7/2002	Employment Permit Fee
1	13	Kota Prabumulih	South Sumatra	4/2003	Employment Service Fee <sup>a</sup>
1	14	Kabupaten Kutai Kertanegara	East Kalimantan	13/2001	Skills Development Fund for Migrant Workers <sup>a c</sup>
1	14	Kabupaten Kutai Timur	East Kalimantan	18/2002	Skills Development Fund for Migrant Workers <sup>a c</sup>
1	14	Kabupaten Kutai Timur	East Kalimantan	20/2002	Employment Service Fee
1	14	Kabupaten Kota Baru	South Kalimantan	7/2003	Employment Service Fee <sup>a</sup>
1	22	Kabupaten Pasir	East Kalimantan	7/2003	Employment Service Fee <sup>a</sup>
2	36	Kota Lubuk Linggau	South Sumatra	11/2004	Employment Service Fee
2	39	Kota Magelang	Central Java	19/2001	Employment Permit Fee <sup>a</sup>
2	56	Kota Bogor	West Java	7/2003	Employment Permit Fee
2	59	Kota Bitung	North Sulawesi	13/2001	Employment Fee <sup>a</sup>
2	63	Kota Banda Aceh	Nanggroe Aceh Darussalam	9/2003	Employment Service Fee
2	70	Kabupaten Rokan Hulu	Riau Islands	18/2003	Obligation to Report on Vacancies and Migrant Workers' Placement
2	72	Kabupaten Bolaang Mangondow	Gorontalo	21/2001	Employment Permit Fee
2	72	Kabupaten Bolaang Mangondow	Gorontalo	22/2002	Employment Service Fee
2	80	Kota Banjarmasin	South Kalimantan	10/2003	Employment Service Fee
2	103	Kabupaten Toba Samosir	North Sumatra	5/2003	Employment Supervision and Protection Fee
2	112	Kabupaten Malinau	East Kalimantan	16/2002	Employment Service Fee
2	113	Kota Dumai	Riau Islands	10/2004	Employment

Quantile	#Migrant Workers	Kabupaten/Kota	Province	No./Year	Title of <i>Perda</i>
2	114	Kabupaten Musi Banyuasin	South Sumatra	19/2002	Employment Service Fee <sup>a</sup>
2	124	Kota Bengkulu	Bengkulu	5/2003	Employment Permit Fee
2	124	Kota Bengkulu	Bengkulu	6/2003	Employment Service Fee
2	126	Kota Tangerang	Banten	13/2002	Employment Service Fee
2	145	Kota Manado	North Sulawesi	6/2002	Employment Placement and Protection Fee <sup>a</sup>
2	149	Kabupaten Tapanuli Tengah	North Sumatra	46/2001	Employment Supervision and Protection Fee
2	168	Kabupaten Luwu Timur	South Sulawesi	16/2006	Employment Permit and Service Fee
2	171	Kabupaten Ogan Komering Ulu	South Sumatra	11/2005	Obligation to Report on Migrant Workers' Placement
2	173	Kabupaten Batang Hari	Jambi	40/2001	Employment Permit Fee
2	174	Kabupaten Bungo	Jambi	2/2002	Local Revenue from Employment
3	232	Kota Rejang Lebong	Bengkulu	10/2002	Job Seekers' Registration Fee and Employers' Fee
3	258	Kabupaten Muara Enim	South Sumatra	24/2001	Employment Permit
3	282	Kota Bandung	West Java	19/2002	Employment Service Fee <sup>a b</sup>
3	286	Kota Makassar	South Sulawesi	9/2004	Rules on Employment Service Fee <sup>a</sup>
3	316	Kabupaten Kuantan Singingi	Riau Islands	7/2003	Workers' Placement
3	359	Kabupaten Nunukan	East Kalimantan	43/2003	Employment Service Fee <sup>a</sup>
3	373	Kabupaten Hulu Sungai Selatan	South Kalimantan	14/2002	Employment Service Fee <sup>a</sup>
3	386	Kabupaten Mamuju	West Sulawesi	9/2002	Employment Permit Fee <sup>a</sup>
3	431	Kota Cilegon	Banten	12/2004	Employment Service Fee
3	501	Kabupaten Dairi	North Sumatra	5/2002	Employment
3	504	Kota Surabaya	East Java	1/2003	Employment Service Fee <sup>a</sup>
3	536	Kota Madiun	East Java	8/2004	Employment Service Fee <sup>a</sup>
3	595	Kota Kupang	East Nusa Tenggara	14/2007	Employment
3	634	Kabupaten Sidoarjo	East Java	9/2008	Employment Service <sup>b</sup>
3	687	Kabupaten Mojokerto	East Java	4/2009	Employment Fee
3	697	Kota Binjai	North Sumatra	5/2003	Employment Supervision and Protection Fee
3	738	Kabupaten Bengkulu Utara	Bengkulu	12/2003	Employment Service Fee <sup>a</sup>
3	755	Kabupaten Pematang	East Java	5/2008	Employment Service Fee
3	802	Kota Bandar Lampung	Lampung	10/2003	Employment Fee <sup>a</sup>

Quantile	#Migrant Workers	Kabupaten/Kota	Province	No./Year	Title of <i>Perda</i>
4	945	Kota Mataram	West Nusa Tenggara	7/2002	Employment Service Fee <sup>a</sup>
4	1,013	Kabupaten Luwu Utara	South Sulawesi	34/2001	Employment Permit
4	1,021	Kabupaten Sukoharjo	Central Java	30/2001	Employment Permit Fee
4	1,021	Kabupaten Sukoharjo	Central Java	31/2001	Employment Service Fee
4	1,052	Kabupaten Kampar	Riau Islands	20/2003	Employment Service Fee
4	1,110	Kota Palembang	South Sumatra	22/2001	Employment Support Fee
4	1,139	Kabupaten Donggala	Central Sulawesi	11/2002	PPTKIS License
4	1,139	Kabupaten Donggala	Central Sulawesi	12/2002	Employment Recruitment Fee
4	1,230	Kabupaten Maros	South Sulawesi	18/2002	Employment Rules and Fee <sup>a</sup>
4	1,304	Kabupaten Pasaman	West Sumatra	16/2003	Employment Service Fee
4	1,310	Kabupaten Jeneponto	South Sulawesi	5/2002	Employment Service Fee
4	1,357	Kabupaten Bantul	The Special Region of Yogyakarta (DIY)	1/2005	Employment Placement
4	1,359	Kabupaten Purbalingga	Central Java	6/2001	Employment Permit and Service Fee
4	1,421	Kabupaten Bekasi	West Java	5/2001	Employment Service Fee <sup>a</sup>
4	1,583	Kota Medan	North Sumatra	7/2003	Employment Service Fee
4	1,637	Kabupaten Bogor	West Java	4/2009	Employment License
4	1,719	Kota Malang	East Java	13/2007	Rules on Employment Service Fee
4	1,954	Kabupaten Aceh Timur	Nanggroe Aceh Darussalam	9/2003	Employment Service and Permit Fee
4	2,227	Kabupaten Gowa	South Sulawesi	5/2002	Employment Service Fee
4	2,263	Kabupaten Sikka	East Nusa Tenggara	24/2001	Employment Placement Fee <sup>a</sup>
4	2,487	Kabupaten Sumedang	West Java	6/2002	Employment Fee <sup>a</sup>
4	2,802	Kabupaten Dompu	West Nusa Tenggara	16/2001	Employment Service Fee
4	2,929	Kabupaten Tasikmalaya	West Java	2/2006	Employment Service Fee
4	3,158	Kabupaten Tana Toraja	South Sulawesi	8/2003	Employment Permit Fee
4	3,534	Kabupaten Banjarnegara	Central Java	3/2003	Migrant Workers' Placement
5	4,202	Kabupaten Magelang	Central Java	15/2005	Employment Permit Fee
5	4,843	Kabupaten Sragen	Central Java	10/2004	Employment Permit Fee
5	5,388	Kabupaten Pinrang	South Sulawesi	7/2003	Employment Service Fee

Quantile	#Migrant Workers	Kabupaten/Kota	Province	No./Year	Title of <i>Perda</i>
5	5,853	Kabupaten Bima	West Nusa Tenggara	158/2006	Employment Service
5	6,834	Kabupaten Tangerang	West Java	21/2002	Employment Service Fee
5	7,162	Kabupaten Kebumen	Central Java	52/2004	Employment Fee <sup>a</sup>
5	8,304	Kabupaten Sumbawa	West Nusa Tenggara	12/2003	Employment Service Fee
5	8,879	Kabupaten Lumajang	East Java	28/2004	Employment License
5	10,124	Kabupaten Kerinci	Jambi	11/2002	Employment Fee <sup>a</sup>
5	10,891	Kabupaten Purwakarta	West Java	18/2002	Employment Service Fee
5	11,489	Kabupaten Bone	South Sulawesi	10/2002	Employment Permit Fee
5	13,141	Kabupaten Kediri	East Java	8/2003	Employment Service Fee <sup>a</sup>
5	14,469	Kabupaten Jember	East Java	12/2003	Employment Fee <sup>a</sup>
5	17,666	Kabupaten Serang	Banten	7/2009	Employment
5	17,967	Kabupaten Bandung	West Java	26/2001	Employment Permit and Service Fee
5	19,035	Kabupaten Subang	West Java	7/2002	Employment Fee <sup>b</sup>
5	25,122	Kabupaten Gresik	East Java	14/2005	Employment Permit and Service Fee
5	26,896	Kabupaten Ponorogo	East Java	6/2004	Employment Service Fee <sup>b</sup>
5	29,201	Kabupaten Sukabumi	West Java	13/2005	Mobilization of Migrant Workers
5	32,380	Kabupaten Malang	East Java	7/2005	Employment Service <sup>b</sup>
5	36,192	Kabupaten Karawang	West Java	22/2001	Employment Service Fee <sup>a</sup>
5	38,715	Kabupaten Tulungagung	East Java	12/2002	Employment License
5	57,067	Kabupaten Indramayu	West Java	6/2003	Employment Fee <sup>a b</sup>

#### TYPE-2 PERDA

Quantile	#Migrant Workers	Kabupaten/Kota	Province	No./Year	Title of <i>Perda</i>
1	3	Kabupaten Barito Utara	Central Kalimantan	6/2005	Legalization fee <sup>b</sup>
1	13	Kabupaten Kotawaringin Timur	Central Kalimantan	2/2002	Legalization fee <sup>b</sup>
2	157	Kabupaten Musi Rawas	South Sumatra	11/2002	Legalization fee <sup>b</sup>
3	297	Kota Tasikmalaya	West Java	23/2003	Legalization fee <sup>b</sup>
4	935	Kabupaten Sidenreng Rappang	South Sulawesi	31/2001	Third Party Contribution <sup>b</sup>
4	1,405	Kabupaten Soppeng	South Sulawesi	11/2001	Third Party Contribution <sup>b</sup>
4	2,802	Kabupaten Dompu	West Nusa Tenggara	20/2001	Legalization Fee <sup>b</sup>

Quantile	#Migrant Workers	Kabupaten/Kota	Province	No./Year	Title of <i>Perda</i>
5	4,581	Kabupaten Jepara	Central Java	17/2001	Administration Fees <sup>b</sup>
5	5,853	Kabupaten Bima	West Nusa Tenggara	25/2001	Legalization Fee
5	5,998	Kabupaten Garut	West Java	34/2001	Third Party Contribution <sup>b</sup>
5	6,296	Kabupaten Lembata	East Nusa Tenggara	6/2005	Administration Fees <sup>b</sup>
5	6,534	Kabupaten Magetan	Central Java	25/2000	Administration Fees <sup>b</sup>
5	9,754	Kabupaten Banyuwangi	East Java	28/2002	Third Party Contribution <sup>b</sup>
5	18,237	Kabupaten Lombok Barat	West Nusa Tenggara	13/2002	Other Legitimate Local Revenues <sup>b</sup>
5	23,750	Kabupaten Flores Timur	East Nusa Tenggara	4/2005	Administration Fees
5	37,696	Kabupaten Lombok Tengah	West Nusa Tenggara	31/1995	Third Party Contribution
5	38,126	Kabupaten Cirebon	West Java	7/1987	Third Party Contribution <sup>b</sup>
5	49,126	Kabupaten Cianjur	West Java	8/2001	Legalization Fee <sup>b</sup>

#### TYPE-3 PERDA

Quantile	#Migrant Workers	Kabupaten/Kota	Province	No./Year	Title of <i>Perda</i>
5	14,469	Kabupaten Jember	East Java	5/2008	Service for, and Placement and Protection of Indonesian Migrant Workers <sup>b</sup>
5	41,209	Kabupaten Lombok Timur	East Nusa Tenggara	12/2006	Protection of Indonesian Migrant Workers <sup>b</sup>
5	49,126	Kabupaten Cianjur	West Java	15/2002	Protection of Indonesian Migrant Workers <sup>b</sup>

#### TYPE-4 PERDA

Quantile	#Migrant Workers	Kabupaten/Kota	Province	No./Year	Title of <i>Perda</i>
5	8,304	Kabupaten Sumbawa	West Nusa Tenggara	21/2007	Protection and Empowerment of Migrant Workers <sup>b</sup>
5	18,237	Kabupaten Lombok Barat	West Nusa Tenggara	5/2008	Protection of Indonesian Migrant Workers <sup>b</sup>
5	28,430	Kabupaten Blitar	East Java	16/2008	Protection of Indonesian Migrant Workers in Foreign Countries <sup>b</sup>

<sup>a</sup>The Ministry of Home Affairs has cancelled this *perda*.

<sup>b</sup>Copy of *perda* is available.

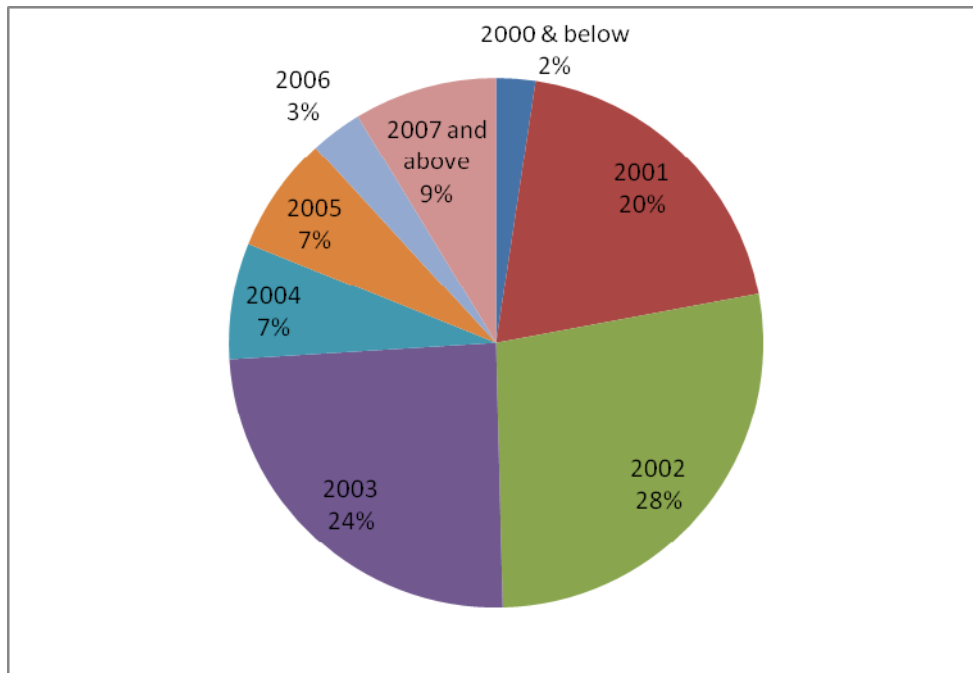
<sup>c</sup>Categorized as type 1 because it was cancelled by the Ministry of Home Affairs. One of the reasons of the cancellation was that the *perda* imposed a fee that was burdensome for the investment climate.

<sup>d</sup>The number of migrant workers based on the 2005 Podes.



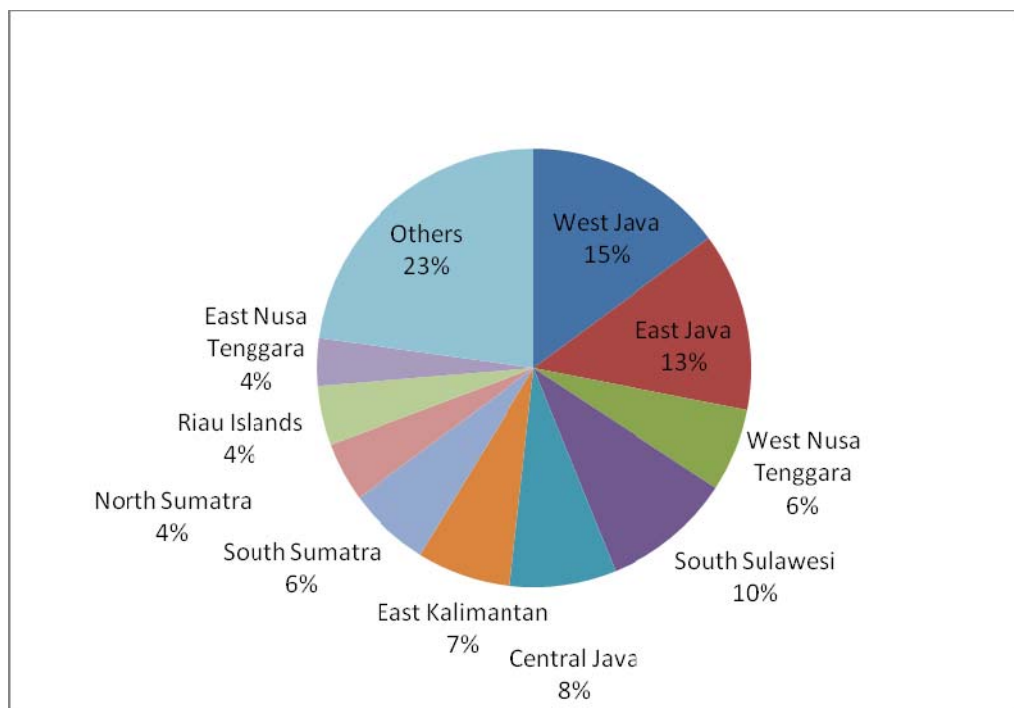
## APPENDIX 3

### Distributions Based on Year and Province



**Figure A1. Distribution of *perda* based on their issuing year**

Note: Total number of *perda* = 127.



**Figure A2. Distribution of the corresponding provinces of the *kabupaten* issuing the *perda***

Note: Total number of *kabupaten* = 115.

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