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

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# THE GOVERNANCE OF INDONESIAN OVERSEAS EMPLOYMENT IN THE CONTEXT OF DECENTRALIZATION

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## I. INTRODUCTION

### 1.1 Background

The governance of international migration in the context of decentralization is somewhat awkward. 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 area of employment and foreign affairs. Law No. 32/2004 concerning Regional Governance stipulates that employment is a decentralized matter, while foreign affairs are not.

Yet, the governance of Indonesia's overseas employment is characterized with centralistic approach. One can obvious see it from the following angles. First, the ones in favor of centralistic governance usually make use of Article 33 and 34 of Law No. 13/2003 concerning 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 concerning the Placement and Protection of Indonesian Migrant Workers (PPTKI). 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 placement and protection of migrant workers reinforces the position of the central government that the governance of overseas employment is more of a centralistic matter. <sup>2</sup> BNP2TKI (National Agency for the Placement and Protection of Indonesian Migrant Workers) has representative office, the so-called Service Center on the Placement and Protection of Indonesian Migrant Workers (BP3TKI), in 19 migrant source provinces. It has no representative at the *kabupaten* (districts)/*kota* (municipality) level, except in 14 selected *kabupaten/kota* (BNP2TKI, 2011). <sup>3</sup> Moreover, the PPTKI law itself is never clear about the relationship between BP3TKI and the provincial and *kabupaten/kota* governments.

Third, Article 10 of PPTKI law authorizes the placement of Indonesian migrants to PPTKIS (private recruitment agency) and article 82 states that the preplacement protection is the responsibility of PPTKIS. <sup>4</sup> Meanwhile 90% of PPTKIS is located in Jakarta. According to PPTKI law and Government Regulation No. 38/2007 concerning Division of Affairs between

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<sup>2</sup> BNP2TKI is one of the mandates of PPTKI law. It was established in 2007 with Presidential Regulation No. 81/2006 concerning the Establishment of BNP2TKI

<sup>3</sup> BNP2TKI's representative office at the provincial level is called Service Center on the Placement and Protection of Indonesian Migrant Workers (BP3TKI). At the selected *kabupaten/kota*, the small office is called Service Post on the Placement and Protection of Indonesian Migrant Workers (P4TKI)

<sup>4</sup> About 90% of total annual placement is the one organized by PPTKIS under Private to Private contract arrangement. The rest is by BNP2TKI under Government to Government contract arrangement

National and Subnational Governments, the responsibilities of issuing PPTKIS' permit and licensing is all in the hand of central government.

However, the decentralistic governance of emigration is also justified for several reasons. First, BNP2TKI (2009) admitted that 80% of 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.

Second, one of the tangible gains of emigration is the remittance whose impact is more influential at the local level rather than 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.

## 1.2. Research Objectives

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

- a) To analyze the nature of the decentralization of the emigration governance;
- b) To construct a typology of various *perda* (local regulation) related to overseas employment which are the *kabupaten*'s/*kota*'s initiatives;
- c) To conduct 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.

## 1.3. Research Methodology

This qualitative research includes the following activities:

Documents and literature review. A series of national laws and regulations related to emigration and decentralization are reviewed to get the overall picture of international migration governance and to understand the nature of authority transfer.

Construction of typology of *perda*. *Perda* related to overseas employment at the local level are collected from various online sources.<sup>5</sup> Furthermore, mapping analysis of various types of *perda* helps understand the relationship between number of *perda* and number of migrant workers at the *kabupaten* level. The number of migrant workers in each *kabupaten/kota* is aggregated from the 2005 Village Potential Census.

Field work in four *kabupaten*. These four *kabupaten* are purposively chosen to examine the policy process behind the existence of nonexistence of *perda* focusing on migrant protection. East Java and West Nusa Tenggara (NTB) were picked out as both are migrant source provinces. Kabupaten Blitar of East Java province and Lombok Barat of NTB are *kabupaten* with a protection *perda*. Meanwhile, their neighboring *kabupaten*, Kabupaten Ponorogo and Lombok Tengah have the draft of protection *perda* but rejected to be realized as protection *perda*.

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<sup>5</sup>(i) <http://gudanghukumindonesia.blogspot.com/>; (ii) <http://www.kppod.org/>; (iii) <http://www.legalitas.org/>.

The initial part of the fieldwork involved in depth interview with local government officials, local NGOs, migrant workers' associations, and private recruitment agents. At the village level, prospective migrant workers, former migrants, or their families were invited to discuss the emigration issues they encounter in focus group discussions (FGDs). Interviews were also carried out with private recruitment agencies and migrant workers experiencing abuse—either prior to departure, during work, or after arrival in Indonesia. FGD is also held at the kabupaten level. Thus, in total, the fieldwork in the four *kabupaten* involved 12 FGDs (per *kabupaten*: two with migrant workers and one with stakeholders at the *kabupaten* level).

#### **1. 4. Limitation of the Research**

Having the level of analysis at *kabupaten/kota* level, this research did not include problematic *perda* passed at the provincial level. Moreover, in the absence of official copy of *perda*, the research relied only on the list of *perda* related to overseas employment available online. In reality, there are some hundreds of them issued at the *kabupaten/kota* level. However, only 127 *perda* could be obtained. Our findings, then, only indicate the characteristic of the reported *perda*. Furthermore, the current status of these online *perda* online 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. Equally important to notice is that the research did not observe the implementation of the *perda*. Instead, it only focused on their textual analysis of *perda* which is considered to be important lesson learned for other migrant-source *kabupaten/kota* wishing to prepare the protection *perda*.

#### **1.5. Structure of the report**

Chapter 2 discusses more detailed information on local government's roles and responsibilities according to PPTKI law and to Government Regulation No. 38/2007. Chapter 3 covers the typology of *perda* related to overseas employment along with the mapping analysis. Chapter 4 summarizes the findings of the field work focusing on the legal drafting process and drawing some lessons learned on the enabling conditions under which *perda* could be passed in Kabupaten Blitar and Lombok Barat.

## **II. NATIONAL REGULATORY FRAMEWORK**

### **2.1. Local Government's Responsibilities in PPTKI Law**

The principle criticism against the PPTKI law deals with its bias towards 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. Lack of protection within the law is obvious for the following reasons.

Out of 109 articles of the law, only one chapter of eight articles (article 77 - 84) deals with protection. Although article 77 of the law defines protection as preplacement, placement, and postplacement, the rest of the provisions basically perceives protection in terms of placement period overseas (see article 78 – 81) and obligates the workers to pay for assistance and protection program (see articles 83 - 84). In terms of preplacement, the law assigns the private

recruitment agency to be the one in charge of (article 82). The postplacement protection remains untouched.

Preplacement protection against extortion and exploitation has not been well elaborated by PPTKI law. Article 39 instructs private recruitment agencies to bear all costs except stated otherwise. However, Article 76 (1) and (2) of the PPTKI law state that private recruitment agencies can charge the costs of (i) processing identity documents; (ii) health and psychological tests; (iii) job training and professional certificate; and (iv) “others”. The term “others” is then explained by Permenakertrans No. PER.14/MEN/X/2010 to be (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 fee. Furthermore, Article 76 (3) of the law says that these costs must be administered transparently. No one could guarantee that the PPTKIS do not overcharge migrant workers, unless there exist effective supervision and proper sanction by the government.

Unfortunately, clear provision of supervision against the private recruitment agencies has been particularly missing in the law. This is so because of several reasons. First, PPTKI law is inconclusive with the institutions in charge of supervision roles. Article 92 (1) states that governments at all levels, including local government are responsible for supervision, while article 95 says BNP2TKI. Meanwhile the delineation authority between governments at all levels and BNP2TKI is far from clear. Moreover, this triggers question of whether supervision fund is also shared to *kabupaten/kota* where BNP2TKI has no representative, expect small posts only in 14 *kabupaten*.

Second, provisions for supervision (article 92(3)) is yet to be completed. The very article promise to further elaboration of supervision provision in the government regulation. Seven years have passed, the promise was never materialized. Similarly, supervisory mechanism – being the responsibilities of government at all levels – is stipulated generally in article 93 and whose details is assured to be specified in ministerial regulation. Again, until now, the details have not been made in any of the ministerial regulations.

Third, supervision becomes more difficult to carry out at the *kabupaten/kota* level due to article 23 stipulating that the headquarters of PPTKIS is the one bearing the responsibilities of the branch office. Meanwhile vast majority of PPTKIS operate the business from Jakarta, some of them establish branches at the *kabupaten/kota*. This provision makes it difficult for local government to prosecute the violating branch office.

## **2.2. Intergovernmental Responsibilities**

Being one of the implementing regulations of Law No. 32/2004, Government Regulation No. 38/2007 assigns certain authorities to the national as well as subnational governments. Assessment of this regulation can be summarized as follows.

First, centralistic characteristics can be seen from the domination of major responsibilities at central level. These responsibilities are related to placement procedure rather than the protection of the workers. For example, at the central level, the official procedure related to the PPTKIS includes the issuance of (i) private recruitment agency license (SIPPTKIS), (ii) recruitment recommendation, and (iii) mobilization permit (SIP), as well as (iv) the appointment of insurance companies, banks, and medical clinics. On the other hand, the procedure related to the workers incorporates the issuance of KTKLN; computerized data

system of overseas employment (SISKO TKLN); and final predeparture briefing (PAP). These are the areas where both Kemnakertrans and BNP2TKI are interested in.

Second, the above placement procedure has little to do with protection. On the other hand, there are areas where placement procedure overlaps with protection and is apparently not the area where power struggle at the central level exists. These areas include the (i) formulation of bilateral and multilateral agreements, (ii) setting up of 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 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. In reality, these local governments have nothing to do with and cannot access the data of this fee.

Government Regulation No. 38/2007 also assigns the local government to support the roles of the central government. Comparing the responsibilities stipulated by Law No. 39/2004 and Government Regulation No. 38/2007, one can see that the latter is more extended than the former.<sup>6</sup> 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 Local Government's Responsibilities according to Government Regulation No. 38/2007**

(a) 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 (Article 36, 37 of the law)	Registration (A. 22 of the law)	Facilitation of bilateral and multilateral agreements implementation
Supervision of recruitment (A. 92 of the law)	Information dissemination (A. 22 of the law)	Information dissemination regarding SISKO TKLN and supervision of protection fee (USD15) compliance
Permit to establish a PPTKIS branch office (A. 21, A. 37 of the law)	Selection of the workers (A. 22 of the law)	Socialization of the content of work and placement contracts
Passport recommendation (A. 51 of the law)	Home return service (A. 75 of the law)	Assessment and validation of placement contracts
Permit to establish a PPTKIS shelter (A. 70 of the law)		
Assistance, supervision, monitoring (A. 92 of the law)		

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

<sup>6</sup> (i) to have the prospective workers registered (Article 36); (ii) to be informed of the existence of a placement contract (Article 38); (iii) to get a copy of the placement contract (Article 54); (iv) to have the private recruitment agencies registered (Article 37); to give recommendation for passport application of the workers (Article 51 (f)); (v) to assist in mediating between disputing parties (Article 85); (vi) to supervise the placement and protection of migrant workers (Article 92) and (vii) to submit the supervisory mechanism to the minister (Article 93); and (viii) investigation of violations: to act as an investigator in case of a violation (Article 101).

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 Local Government's Initiatives

Many NGOs view that 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. 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 citizens of Indonesia and are no different in terms of rights. The *kabupaten/kota* government is obliged to give them service and protection while they are still in its jurisdiction.

Furthermore, it is definitely not recommended 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 local governments' and responsibilities in line with the mandate of the PPTKI law and Government Regulation No. 38/2007.

Second, a *perda* can state specific needs of the *kabupaten/kota* which cannot be accommodated in the PPTKI law. Such issues as main destination and cost structure are locally specific; therefore, a *perda* can deal with these issues. For example, the majority of migrant workers from Kabupaten Lombok Barat and Lombok Tengah work in Malaysia and the Middle East, while their fellow migrant workers from Kabupaten 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 protection *perda* involves civil society organizations and, therefore, enhances democratization. The participation of NGOs and academicians reveals one step towards improvement in governance. From a policy perspective, more interaction 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 would certainly improve.

Finally, the dilemma between having and not having a protection *perda* lies in the fact that, empirically speaking, the implementation of *perda* and its law enforcement have been far from sufficient. We should ask the question thus: Should we establish a normative law or should we cling to the evidence and abandon the idea of having a *perda*? Based on the four reasons mentioned earlier, we should bring the establishment of *perda* to the fore. Lack of implementation, however, is not a problem that can be solved overnight. It can only be solved slowly but surely. The ultimate desire for establishing a protection *perda* is that, in the long run, it can serve as the guide for civil society behaviors and attitudes that respect migrant workers. Therefore, we should not leave the idea of passing protection *perda* until the lack of

implementation is solved. 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

#### 3.1 Regional Autonomy and *Perda* on Taxes and *Retribusi*<sup>7</sup>

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

These two pillars are backed with various implementing regulations. According to Mahi (2002), one of the most important supports is Law No. 34/2000 concerning Local Taxes and *Retribusi* (PDRD). Law No. 34/2000 allowed for a flexibility of local governments in generating their local revenue. By passing *perda*, local governments can impose taxes and *retribusi* even without the approval of the central government.

However, having the objectives of maximizing the 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 autonomy, the open-list nature of Law No. 34/2000, apparently, has given room to local governments to exercise their power. Moreover, the freedom to issue the *perda* to increase local revenue has been misunderstood by local governments as a symbol of independence from the central government (Mawardi et al., 2009). Meanwhile, opportunities for them 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 against the so-called problematic *perda* is notoriously weak, particularly in the context of 524 *kabupaten/kota*.<sup>8</sup>

The era of 2000s saw a booming of problematic *perda* and was considered one of the side effects of decentralization on business enabling environment. The phenomenon of problematic *perda* has 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 cross-sectoral taxes and charges ranging from agriculture, trade, industry, transportation, communication, employment, etc. In general, they might appear as *perda* on excessive business license, *perda* on goods and services distribution, and *perda* on general administration fees (Bachtiar et al., 2009). Many times, the business communities have

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<sup>7</sup> *Retribusi* is officially a user charge that is collected as payment in return for a service. However, on the ground, it includes other nontax charges collected by the government.

<sup>8</sup> Latest data from Directorate General of Fiscal Balance, Ministry of Finance (<http://www.djpk.depkeu.go.id/datadjpk/72/>).



to pay double taxes horizontally (across different sectors) and vertically (at the central and local levels).

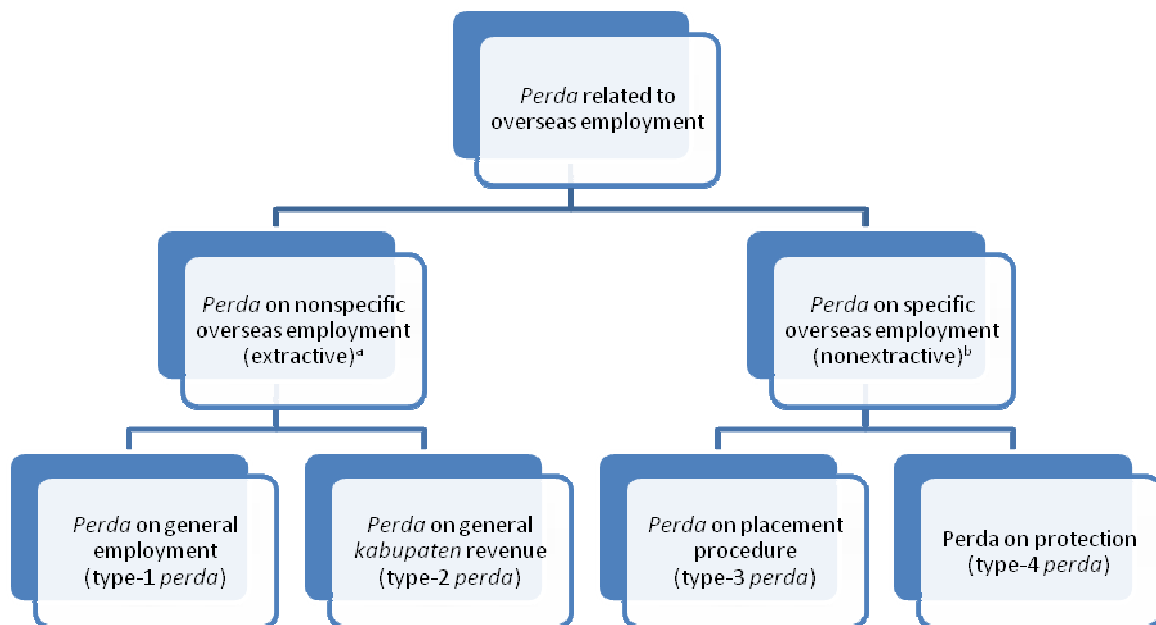
The central government has been reprimanded for slow action to revoke problematic *perda* that clearly distort the investment climate. The speed of cancellation cannot keep up with the speed of issuing new *perda*. After many years of pros and cons, in late 2009, the parliament finally passed Revision of Law No. 34/2000, which was Law No. 28/2009 concerning 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 within the list of the new law.

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

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 do official registration as employment seekers and (ii) when they ask for official recommendation to be attached in passport application. Second, it can also levy them indirectly through the PPTKIS. In running its operation, a PPTKIS must get approval from the local government. The approval appears as a recommendation letter, such as (i) recommendation to acquire a business license, (ii) recommendation to recruit workers, (iii) recommendation to establish training center, and (iv) recommendation to establish dormitory. Some *kabupaten/kota* might also impose placement fee 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 this ground, we offer the typology with two general types: 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) focuses on charges imposed on general employment, including overseas employment.<sup>9</sup> These charges are paid either by the workers or by the companies. Some *kabupate/kotan* differentiate *perda* that charges the workers (*perda* on employment service charges) from *perda* that charges the companies (*perda* on licensing charges).<sup>10</sup> However, the majority of *kabupate/kotan* just combine the two in one *perda*. 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, *perda* on employment charges.

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

*Perda* on placement procedure (type 3) deals with overseas employment procedure. It does not rule any financial consequences, neither to the migrant workers nor to the PPTKIS. Although

<sup>9</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 extractive nature which is implied in the article on cost structure or the article that assures further arrangement on another local regulation. These articles are usually placed at the end of the *perda*.

<sup>10</sup>*Perda* on general employment stipulates 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. These *perda* always put protection as the rationale for charges they impose. 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).

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* tends to only duplicate the substance of the PPTKI law and, therefore, it does not fill the policy gap. Indeed, the presence of type-3 *perda* is rather unnecessary because placement procedures have been regulated nationally.

*Perda* on protection (type 4) are concerned with the protection of migrant workers. It does not entail any charge and concentrates on what have not been ruled in the national law. Protection *perda* mandates the establishment of a protection commission: a specialized body which expedites the handling of abuse and extortion cases, mediating between various stakeholders, and issuing 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 they charge more than they should, these *perda* are considered problematic. Certainly, this is a 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 (Kemdagri) on the ground that they go against the spirit of local governments welcoming investment.<sup>11</sup> However, in reality, efforts for the cancellation face enormous difficulties. Obtaining copies of *perda* for legal examination is not easy since the *kabupaten/kota* do not send them to Jakarta. In fact, *kabupaten/kota* tend to hide them.<sup>12</sup> Also, the task of reviewing *perda* produced by a total of 524 *kabupaten/kota* is a task that is next to impossible.<sup>13</sup> Moreover, many local governments still disobey the order to cancel the *perda*. They might cancel the *perda* but issue lower legal products with the same content of the cancelled *perda*. 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 consequence that the migrant workers or the PPTKIS have to bear. However, their difference is that the former focuses more on placement procedure, while the latter on the protection of migrant workers. This is reflected in the proportion of articles and the provision of placement in comparison with those of protection, as well as the mandate to establish Protection Commission.

### 3.3 Mapping Analysis

Table 2 underlines the following findings. 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. In 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 rest of the Qs, Q5 *kabupaten/kota*, which are the migrant-source *kabupaten/kota*, produced more *perda*, both in terms of quantity and variation.

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<sup>11</sup>Much hope is put in the implementation of 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.

<sup>12</sup>This was the experience of the research team in Kabupaten Ponorogo.

<sup>13</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**

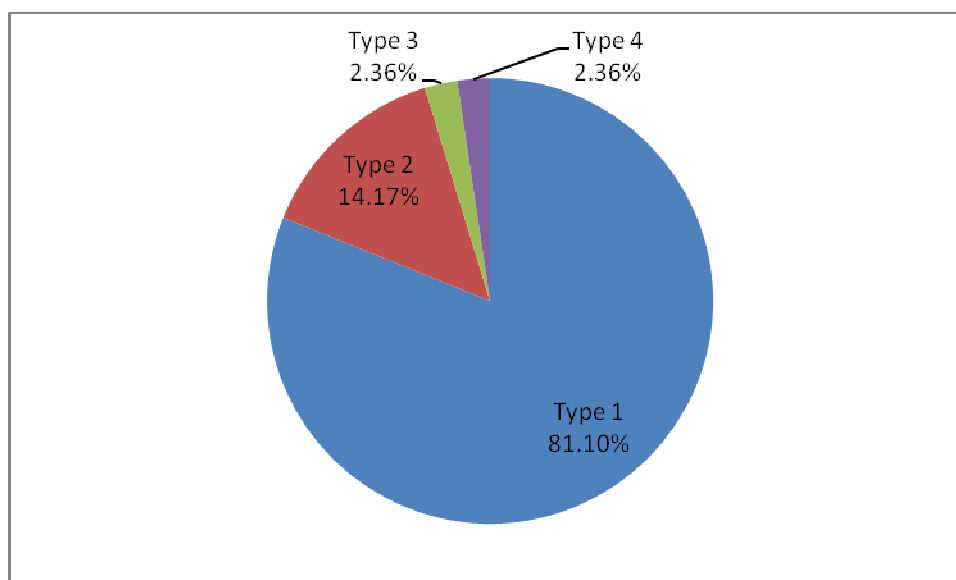
	Q1	Q2	Q3	Q4	Q5
Σ Kabupaten/Kota = 418 <sup>a</sup>	84	84	84	84	82
Σ Migrant workers in each kabupaten/kota issuing perda <sup>b</sup>	0–22	36–174	232–802	945–3,534	4,202–57,067
Σ Kabupaten/kota issuing perda related to overseas employment = 115	14	21	20	25 <sup>c</sup>	35 <sup>c</sup>
Σ Kabupaten/kota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

Source: Author's calculation based on the 2005 Podes and reported perda available on the website 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 2).



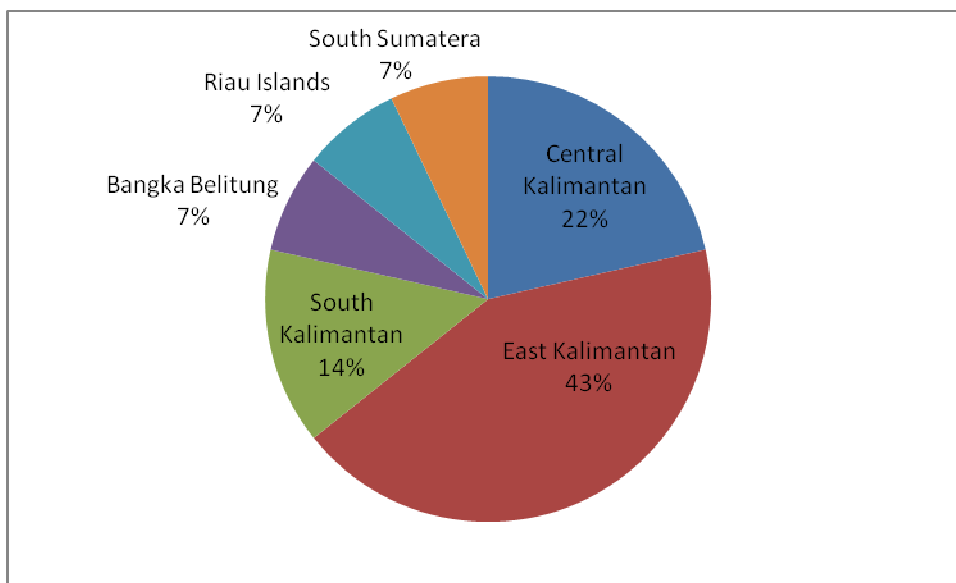
**Figure 3. Distribution of perda according to their types**

Note: n = number of perda = 127.

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 protection *perda*. Meanwhile, 34 *kabupaten/kota* (41.5%) of the Q5 *kabupaten/kota* are more interested in passing extractive *perda*. Indeed, awareness and willingness of local governments to take the initiative to protect their migrant workers is still far from adequate.

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



**Figure 4. Distribution of corresponding provinces of Q1 *kabupaten/kota***

Note: n = number of *kabupaten/kota* = 14.

Figure 4 highlights the corresponding provinces of Q1 *kabupaten/kota* that are well known to be the transit areas where people from all over Indonesia cross the borders. At transit areas, the prospective migrant workers and the PPTKIS would require various administrative services from the local governments. In addition, irregular/undocumented /illegal migration activity that involves making fake identity documents take place in these areas. Considering this potential, the *kabupaten/kota* governments issue *perda* to impose charges to the migrant workers and agencies. 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.

Another explanation comes from domestic migration 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 from Java. Local governments in these *kabupaten/kota* would also be eager to levy domestic migrant workers. Because of these features, type-1 and type-2 *perda* tend to spread in the *kabupaten/kota* regardless of the number of overseas migrant workers.

Extractive *perda* which charge the workers for administrative services are against Presidential Regulation No. 36/2002 concerning the Ratification of ILO Convention No. 88 concerning the Organization of the Employment Service. In general, Article 6 (b) of the law 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 concerning Labor states that government institutions as well as PPTKIS are not to charge any fees 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 we made is not necessarily mutually exclusive. Some *kabupaten/kota* issue more than one *perda*. Kota Bontang, Kabupaten Kutai Timur, Bolaang Mangondow, Bengkulu, Donggala, and Sukoharjo, legislated two *perda* of type 1. Meanwhile, Kabupaten 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 protection *perda* do not cancel their extractive *perda*. Sumbawa and Lombok Barat are *kabupaten* with 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, not in other ways by violating the law and taxing the workers, directly or indirectly. The only mutually exclusive case is Kabupaten Blitar, which only passes protection *perda* and none of the extractive types.

## **IV. POLICY PROCESS OF PROTECTION *PERDA*: TO HAVE OR NOT TO HAVE**

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

#### **4.1.1 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 Women and Migrant Workers (P3BM). Other NGOs involved were the Post Institute, Lapesdam 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.

In early 2008, the Blitar parliament agreed to include the draft *perda* (*raaperda*) on migrant workers into the local legislation program (*prolegda*). Entering the 2008 Prolegda meant that the *raaperda* would be discussed by the parliament and had to be legislated by 2008. A special committee was then formed to thoroughly discuss the *raaperda* submitted by the NGOs. After several meetings with various stakeholders, the parliament approved the *perda* on December 17, 2008. The day after, on the international migrant day, which was on December 18, 2008, the  *bupati* signed Perda No. 16/2008 concerning the Protection of Indonesian 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>14</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 Proautonomy (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 Disnakertrans, felt somehow excluded in the discussion.<sup>15</sup> An NGO activist that was interviewed denied this complaint. According to him, 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 Disnakertrans changed several times. As a result, the successors felt left behind in the process.<sup>16</sup>

Furthermore, the Disnakertrans at the *kabupaten* level argued that the *perda* had some substantial flaws. This was corroborated by the official letter of the Governor of East Java following their assessment of the substance of Blitar's *perda*.<sup>17</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 Disnakertrans to supervise Blitar migrant workers working overseas, a task that cannot be performed by the Disnakertrans. 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 the law and not by the *perda*.

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

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<sup>14</sup>He was the one who gave the number of the *perda*, but, ironically, refused to book the *perda* in the *kabupaten* legislation book. Therefore, the *perda* was unenforceable.

<sup>15</sup>Discussion with some officials at the labor agency on 21 June 2010.

<sup>16</sup>Discussion with an SBMB activist (MS) on 21 June 2010.

<sup>17</sup>Letter from the provincial secretary on behalf of the Governor of East Java No. 188/11173/013/2009 dated 31 July 2009 concerning the Assessment of Blitar's *Perda* No. 16/2008.

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* level.<sup>18</sup> The formation of this independent body comes from the understanding that the Disnakertrans will not be able to solve problems alone. Meanwhile, problems at the *kabupaten* level require coordination with many institutions, even including those from other *kabupaten* 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>19</sup> In general, the establishment of the protection commission at the *kabupaten* level can help solve the abundant cases at the migrant-sending *kabupaten* and villages.

Except for some trivialities, the protection commissions in Kabupaten Blitar and Lombok Barat are similar in terms of their establishment and general responsibilities. The only substantial difference lies in the fact that the protection commission in Blitar is established and selected by the parliament. This is due to the fact that the protection *perda* of Kabupaten Blitar is an initiative made by the parliament, while that of Kabupaten Lombok Barat is 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.

#### **4.1.2 Kabupaten Lombok Barat<sup>20</sup>**

In 2006, local NGOs—Koslata and PPK—were committed to assist 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 Disnakertrans; and (iv) academicians. The inclusion of these stakeholders is to ensure their sense of belonging. 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 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>18</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 H (female, about 50 years old, 21 October 2010), MS (male, about 50 years old, 24 October 2010), and K (male, about 40 years old, 28 October 2010).

<sup>19</sup>Interview with MS (NGO activist, male, about 50 years old, 24 October 2010).

<sup>20</sup>Interviews with S (Koslata officer, male, about 50 years old, 24 October 2010) and H (PPK officer, about 45 years old, 21 October 2010).



### **4.1.3 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>21</sup> The overall process of legal drafting brought together some NGOs, local government officials, parliament members, and academicians.

In 2006, the *perda* had come to its fourth revision. An officer of the Protection Commission on Women and Children explained that the cost had reached no less than Rp100 million, yet JKPS Cahaya failed to convince the Disnakertrans as well as the local parliament to agree with the draft.<sup>22</sup> JKPS Cahaya held several demonstrations to push the local government to react. However, the Disnakertrans 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.

### **4.1.4 Kabupaten Lombok Tengah**

In Kabupaten Lombok Tengah, the preparation for the legal drafting began in 2004 when PPK, a local NGO, approached the labor 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 draft was rejected by the local parliament.<sup>23</sup> One important reason of the rejection was that the substance of the *perda* was duplicating the PPTKI law and, therefore, it would be of no urgent use.<sup>24</sup>

## **4.2 Comparing the Outcomes and Enabling Conditions in the Four *Kabupaten***

### **4.2.1. Local Initiatives to Pass Protection *Perda***

To retrieve information from the four visited *kabupaten*, we constructed Table 3. 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

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<sup>21</sup>Interviews with officers from PUSAR: CA (male, about 30 years old, 30 June 2010) and T (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, CA said that JKPS Cahaya had closed its operation. Nevertheless, one of its former officers was invited (through PUSAR) to an FGD at the *kabupaten* level, but he left the discussion afterwards for an unknown reason.

<sup>22</sup>Interview with an officer from the Protection Commission of Women and Children named R (female, about 30 years old, 28 June 2010).

<sup>23</sup>There are two versions of stories about who rejected the draft. According to an interview with Z (male, about 40 years old, 29 October 2010), an officer from 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 an informant from the Kabupaten Lombok Tengah Disnakertrans named W (male, about 50 years old, 29 October 2010), the executive disagreed with the idea of having a protection *perda*. He said that he was one of the team members that criticized the *raperda*.

<sup>24</sup>This information came from an informant from the Disnakertrans named W (male, about 50 years old, 29 October 2010).

dan demotivate the morale of stakeholders. This is the case with Kabupaten Blitar where the successors were not familiar with the passed stages of the policy process.

Second, the *raperda* of Kabupaten Ponorogo and Lombok Tengah that we reviewed reveal that they both fall into the 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 the PPTKI law, the executive and legislative in these two *kabupaten* were not interested in and did not show commitment to passing them.<sup>25</sup>

Third, 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>26</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 3. 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 Prolegda. Rejected by both the executive and legislative	Failed to be included in the 2006 Prolegda. Rejected by both the executive and legislative
Legislation date of <i>perda</i>	18 December 2008 <sup>b</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>a</sup>	Protection	Protection	Placement	Placement

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

<sup>b</sup>It was the date when the *bupati* signed the *perda*.

<sup>25</sup>This information came from an interview with an informant from the Lombok Tengah Disnakertrans, W (male, about 50 years old, 29 October 2010). The same reason was also mentioned by informants from the Kabupaten Blitar Disnakertrans, namely HS (male, about 50 years old, 21 June 2010), Y (male, about 40 years old, 21 June 2010), and R (male, about 40 years old, 21 June 2010), who rejected the protection *perda*. However, one should be careful with the statement “the *perda* is just copied and pasted from the PPTKI law”, as it could be just an excuse to reject a local initiative.

<sup>26</sup>Interviews with parliament members: GT (male, about 40 years old, 22 June 2010) and S (female, about 40 years old, 22 June 2010).

#### 4.2.2. Internal Factors

We include factors such commitment, capacity, trust, position of the NGO, physical distance, and the intervention of PPTKIS to be the factors influencing relationship between the stakeholders. Table 4 compares four main stakeholders during the policy process: the local government, local parliament, advocating NGOs, and the PPTKIS. The local government, comprising the Disnakertrans, Legal Department of the *Bupati* Office, *kabupaten* secretary, and head of the Local Agency for Development Planning (Bappeda), is particularly important during the process, as it is the implementer of the *perda*.<sup>27</sup> Therefore, the capacity of NGOs to convince them to join the policy process is very important.<sup>28</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 4. 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 is not sufficient.	Good capacity to formulate legal drafting. Good capacity to lobby the executive and legislative.	Not known	Good
Trust, relationship, and interaction	Distrust, low interaction, in particular between the NGO and Disnakertrans. 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 officers from PUSAR: CA (male, about 30 years old, 30 June 2010) and T (male, about 25 years old, 30 June 2010).

<sup>27</sup>These officials were included in the legal drafting team.

<sup>28</sup>The policy process in 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 but also with the legislative, and not only at the *kabupaten* level but also at the provincial level. Therefore, resistance of their partners was minimal. In the case of 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>29</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 *raiperda*, such as the case of Lombok Tengah. It also depends on the substantial and technical capacity of the NGOs to lobby and convince both the local government and the parliament to pass the *perda*.

Nevertheless, low commitment can also simply be a lack of willingness and awareness of gender issues. This was expressed by a gender activist in Ponorogo.<sup>30</sup> At the same time, the general mindset of the local government is 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>31</sup> In the case of Lombok Tengah, an informant from the Disnakertrans was concerned that the *perda* would disturb the migration outflow which could further cause a high unemployment rate at the *kabupaten* level.<sup>32</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>33</sup> In addition, many fear the insufficient budget and capacity to carry out the mandate of the *perda*.<sup>34</sup> In Lombok Barat, an informant from PPK was concerned that the Local Budget (APBD) had not been able to accommodate an increase in budget due to the increase in roles and responsibilities.<sup>35</sup> In all the visited *kabupaten*, it was observed that the Disnakertrans appeared to have only a limited budget, which could be the main reason of 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 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

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<sup>29</sup>Interview with MS (NGO activist, male, about 50 years old, 23 October 2010).

<sup>30</sup>Interview with an informant from the Local Commission on the Protection of Women and Children named R (female, about 30 years old, 28 June 2010).

<sup>31</sup>Interview with an informant from the Legal Department of the *Bupati* Office of Ponorogo named ME (male, about 50 years old, 28 June 2010) and interviews with informants from the Kabupaten Blitar Disnakertrans who rejected the protection *perda*: HS (male, about 50 years old, 21 June 2010), Y (male, about 40 years old, 21 June 2010), and R (male, about 40 years old, 21 June 2010).

<sup>32</sup>Interview with an informant from the Kabupaten Lombok Tengah Disnakertrans named W (male, about 50 years old, 29 October 2010).

<sup>33</sup>Interview with an informant from the Legal Department of the *Bupati* Office of Lombok Tengah named Z (male, about 50 years old, 29 October 2010) and interviews with informants from the Kabupaten Blitar Disnakertrans who rejected the protection *perda*: HS (male, about 50 years old, 21 June 2010), Y (male, about 40 years old, 21 June 2010), and R (male, about 40 years old, 21 June 2010).

<sup>34</sup>Interview with an informant from the Bappeda of Ponorogo named M (male, about 50 years old, 28 June 2010).

<sup>35</sup>In 2010, the budget of the protection commission came from the Revised APBD, the sustainability of which was in question.

thanks to the development of trust over some decades.<sup>36</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.

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 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>37</sup> Because of this, the PPTKIS were not aware of the *perda* in Lombok Barat.<sup>38</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>39</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, 2008). They threatened to move out of Blitar if the *raperda* was passed.

#### **4.2.3. External Factors**

External factors are the factors out of the control of the stakeholders, including election time, transfer of government staff, finance from donor agencies, and other incentives (table 5).

**Table 5. General Information on External Factors: Stakeholders' Perception**

	<b>Blitar</b>	<b>Lombok Barat</b>	<b>Ponorogo</b>	<b>Lombok Tengah</b>
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

<sup>36</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.

<sup>37</sup>Interview with MS (NGO activist, male, about 50 years old, 23 October 2010).

<sup>38</sup>Interviews with informants from the PPTKIS in Lombok Barat, namely A (male, about 30 years old, 21 October 2010), FA (female, about 50 years old, 22 October 2010), and T (male, about 40 years old, 26 October 2010).

<sup>39</sup>Interview with an officer from the Protection Commission of Women and Children named R (female, about 30 years old, 28 June 2010).

	Blitar	Lombok Barat	Ponorogo	Lombok Tengah
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 external factors is very clear in the case of Kabupaten Blitar and Lombok Tengah where political events give advantage to the political process and enhance the approval of *perda* (table 6)

**Table 6. Political Events in Kabupaten Blitar and Lombok Barat**

Political Events	Blitar	Lombok Barat
Year of <i>Prolegda</i>	2008	2007
Date of <i>perda</i> legislation	18 December 2008	14 March 2008
Date of legislative election	6 March 2009	6 March 2009
Other	JPIP Autonomy Award	

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 legislative election on 6 March 2009. In migrant-source *kabupaten*, the incumbents could use policies in favour 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* had been legislated in 14 March 2008, but due to the election events, progress of its implementation was very slow.<sup>40</sup> Following the election, the administration was changed and, therefore, transfer of staff took place. The new officers chosen were not necessarily the ones who understood the issues in their new jobs. Again, this had impede the implementation.

<sup>40</sup>Interview with an informant from PPK named H (female, about 40 years old, 21 October 2010).

The transfer of government staff was unanimously considered to weaken public service delivery. This was the concern of not only NGOs but also government officers. The transfer not only happens too often but also does not consider the qualifications of the new staff. Eventually, this reshaping of administration only weakens the public services, making people suffer, instead of advancing them. Indeed, no one benefits from unnecessary transfer 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 *prolegda*, 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.

## V. CONCLUSION

Overseas employment has been in the grey area as to whether it should be centralized or decentralized. Two most important legal frameworks—the PPTKI law and Government Regulation No. 38/2007—both characterize centralistic governance, with placement, rather than protection, of migrant workers dominating the provisions. In terms of placement, the PPTKI law 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 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, the PPTKI law is in charge of the preplacement protection (Article 82).

With this centralistic management, the central government faces a lot of difficulties in dealing with 80% of the problems which apparently occur in the migrant-sending *kabupaten/kota* and villages. This is true because the PPTKI law 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 of 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, provisions on supervision (Article 92(3)) and supervisory mechanisms (Article 93) are yet to be completed. The PPTKI law 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 at 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 the PPTKI law to the PPTKIS, to the local government, while some others are duties to support the central government's responsibilities which are not mentioned in the PPTKI law. 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?

In answering 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 initiative and improve public services. But 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 to extract levies. Many of the *perda* related to overseas employment do violate Law No. 28/2009 concerning Local Taxes and *Retribusi*. They also violate Law No. 13/2003 concerning Labor, and Presidential Regulation No. 36/2002 concerning the Ratification of ILO Convention No. 88 concerning 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.

We collected 127 *perda* from 115 *kabupaten/kota* which are related to overseas employment. In order to map them according to the *kabupaten/kota*'s number of migrant workers, we constructed a typology as follows: type-1 *perda*: *perda* on general employment which is extractive; type-2 *perda*: *perda* on general *kabupaten/kota* revenue which is extractive; type-3 *perda*: *perda* on placement procedure which is nonextractive; and type-4 *perda*: *perda* on protection which is nonextractive. We found that out of the 127 *perda*, 81% fall in type-1 *perda*; 14.2% in type-2 *perda*; and 2.4% in type-3 and type-4 *perda*. In 82 migrant-source *kabupaten/kota*, only 3 *kabupaten* (3.7%) have protection *perda* (type-4 *perda*).

We also performed a mapping analysis where we found that migrant-source *kabupaten/kota* issue both a higher number and variety of *perda* related to overseas employment. We 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* located at the border with 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 *Kabupaten 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 is *Kabupaten Blitar* which only passed protection *perda* and none of the extractive types.

From the mapping analysis, we also learn that the majority of migrant-source *kabupaten/kota* are not ready to commit themselves to protecting their migrant workers. However, some *kabupaten/kota* are. We selected four *kabupaten*—*Kabupaten Blitar*, *Ponorogo*, *Lombok Barat*, and *Lombok Tengah*—for our 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.

So, what makes some *kabupaten/kota* able to pass the protection *perda*? In order to understand this phenomenon, we looked at the internal factors and external factor.

Our 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 too short for *Ponorogo*, which appeared to be insufficient to pass the *perda* and was too long for *Blitar* that it concurred with transfers of staff several times, even if finally the *perda* was issued. However, the optimal duration for *Lombok Barat*, which was two years, turned out not to be 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 *raperda* into the *prolegda*. Apparently, the substance which was similar to the substance of the PPTKI law could not attract the attention of the stakeholders. However, the substance of the *perda* in Blitar was innovative and became the reason why the local government and the PPTKIS were resistant against it.

The advocating NGOs in Blitar and Ponorogo took the position of policy contestation with Blitar being successful, thanks to the willingness of the local parliament to tap this aspiration, and Ponorogo being unsuccessful. In the case of Lombok Barat, the position of policy engagement of the NGOs proved to be more effective, although this was not the situation 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 block the inclusion of *raperda* into the *prolegda* through members of the parliament who own a PPTKIS or are closely related to the PPTKIS. In Blitar, the intervention of the PPTKIS could be counterbalanced by the high commitment of 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.

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

Apart from the above mentioned factors, we also found that (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 in the implementation phase. Therefore, engaging them from the onset will enable an effective execution of the mandate of the *perda*. At the same time, transfer of government staff that is too often and without fit and proper consideration is damaging the public service delivery, including the protection of migrant workers. Finally, 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.

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