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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

Palmira Permata Bachtiar

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RESEARCH REPORT

The Governance of Indonesian Overseas Employment in the Context of Decentralization

Palmira Permata Bachtiar

Supported by:

PIDS IDRC CRDI

AUGUST 2011

RESEARCH REPORT
FINAL DRAFT

The Governance of Indonesian Overseas Employment in the Context of Decentralization

Palmira Permata Bachtiar

The SMERU Research Institute
Jakarta
14 September, 2011

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Although The SMERU Research Institute has dealt with governance studies for years, this was the first time that it was involved in the issue of international migration governance. In particular, the setting of cross-country collaboration that the study applied has been a unique and, indeed, useful learning experience for SMERU. We are, therefore, very grateful for the opportunity granted by IDRC and PIDS to undertake this important research. We have to mention Dr. Evan Due, Dr. Aniceto Orbeta, Kathrina Gonzales, and Michael Cabalfin without whom the project would not have been realized.

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Finally, we hope that the study can shed some light on the overall policy and institutional framework of Indonesian migrant workers. 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 materialized in the form of local regulations (*perda*). First, we perform a literature review which particularly addresses the issue of *perda* related to overseas employment. Prior to the mapping analysis, a typology of four possible types of classification is constructed. Out of the 127 collected *perda*, 81% fall in type-1 *perda* (*perda* on general employment which are extractive); 14.2% in type-2 *perda* (*perda* on general *kabupaten* (district) revenue which are extractive); 2.4% in type-3 *perda* (*perda* on placement procedure which are nonextractive); and 2.4% in type-4 *perda* (*perda* on migrant worker protection which are nonextractive). We find 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, we conduct fieldwork 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 Lombok Barat were able to pass protection *perda*, while Kabupaten Ponorogo and Lombok Tengah could not, we look at the internal factors: stakeholders and the relationships between them; and the external factors which are beyond the control of the stakeholders. Our field research 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 the private recruitment agencies (PPTKIS), and the timing of election are the factors the outcomes of 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.

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LIST OF ABBREVIATIONS

APBD	:	Local Budget
Bappeda	:	Local Agency for Development Planning
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
Disnakertrans	:	Provincial Agency for Labor and Transmigration
FGD	:	focus group discussion
GDP	:	gross domestic product
GRDP	:	gross regional domestic product
JKPS	:	Social Protection Labor Network
JPIP	:	Jawa Post Institute of Proautonomy
Kemdagri	:	Ministry of Home Affairs
Kemenkeu	:	Ministry of Finance
Kemnakertrans	:	Ministry of Labor and Transmigration
kepmenakertrans	:	labor and transmigration ministerial decree
KTKLN	:	overseas worker's ID card
Menakertrans	:	minister for labor and transmigration
NGO	:	nongovernmental organization
NTB	:	West Nusa Tenggara
OSS	:	one-stop service
P3BM	:	Association for Women and Migrant Workers
P4TKI	:	Service Post on the Placement and Protection of Indonesian Migrant Workers
PAP	:	final predeparture briefing
PPK	:	Association of Five Ideas
PDRD	:	Local Taxes and *Retribusi*
perda	:	local regulation
permenakertrans	:	labor and transmigration ministerial regulation
pilkada	:	*Kabupaten/kota* executive election
Podes	:	Village Potential Census
PPTKIS	:	private recruitment agency
prolegda	:	local legislation program
raperda	:	draft local regulation
SBMB	:	Blitar Migrant Workers' Association
SIP	:	mobilization permit
SIPPTKIS	:	private recruitment agency license
SISKO TKLN	:	computerized data system of overseas employment
SIUP	:	trading license
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.

The decentralistic governance of emigration is also justified for several reasons. Not less than the head of BNP2TKI (National Agency for the Placement and Protection of Indonesian Migrant Workers) (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. Moreover, 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.

Unfortunately, the governance of Indonesia's overseas employment is characterized with centralistic approach. The ones in favour of centralistic approach argue that domestic employment is decentralizable while overseas employment not. This is so because these two types of employment is regulated by two types of laws: Law No. 13/2003 concerning Labor and Law No. 39/2004 concerning 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 that the governance of overseas employment is more of a centralistic matter. Moreover, the Law No. 39/2004 itself is never clear about the relationship between BP3TKI and the provincial and *kabupaten/kota* governments. Furthermore, Article 10 of Law No. 39/2004 authorizes the placement of Indonesian migrants to PPTKIS (private recruitment agency) and article 82 states that the preplacement protection is the responsibility of PPTKIS. Meanwhile 90% of PPTKIS is located in Jakarta. According to Law No. 39/2004 and Government Regulation No. 38/2007 concerning National and Subnational Labour Division, the responsibilities of issuing PPTKIS' permit and licensing is all in the hand of central government.

Research Methodology

The research poses the following questions:

a) What justifies the initiative to formulate a local regulation (*perda*) on the protection of migrant workers at the *kabupaten/kota* level?
b) What kind 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 the *kabupaten/kota* are given technical assistance through nongovernmental organizations (NGOs) in formulating protection *perda*, would they choose to legislate them? What are the enabling conditions under which *kabupaten/kota* are able to pass 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 management in Indonesia. An assessment was also made on the extent to which decentralization has 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 of various *perda*, we mapped and classified *perda* related to overseas employment based on their characteristics. Since there is no single source from which the official and valid list of *perda* in all *kabupaten* can be extracted, the best estimate is to find the data from various online sources. Furthermore, the number of migrant workers in each *kabupaten* is aggregated from the 2005 village potential census (Podes). For simplification, the number of migrant workers is divided into five quintiles.

c) Benchmarking study in four *kabupaten/kota*. Kabupaten Blitar, Ponorogo, Lombok Barat, and Lombok Tengah were four migrant-source *kabupaten* receiving assistance from donor agencies to formulate protection *perda*. Only Kabupaten 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 held with village and *kecamatan* (subdistrict) officials who are in charge of supporting the prospective migrant workers in fulfilling their administration requirements. Interviews were also carried out with private recruitment agencies (PPTKIS) and migrant workers experiencing abuse—either prior to departure, during work, or after 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 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.

Findings

1. Local government's responsibilities in Law No. 39/2004

Law No. 39/2004 has been strongly criticized for its bias towards placement rather than the protection of migrant workers. 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) while the postplacement protection remains untouched.

Preplacement protection against extortion and exploitation has not been well elaborated by Law No. 39/2004. Article 39 instructs private recruitment agencies to bear all costs except stated otherwise. However, according to Permenakertrans No. PER.14/MEN/X/2010 chargeable costs to the workers include (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. Indeed, 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. First, Law No. 39/2004 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. It also 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)) and supervision mechanisms (article 93) are yet to be completed. The very articles promise to further elaboration in the implementing legislation. Seven years have passed, the promise was never materialized. Third, supervision becomes more difficult to carry out at the *kabupaten/kota* level because article 23 says that the headquarters of PPTKIS – vast majority of which is located in Jakarta – is the one bearing the responsibilities of the branch office.

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

Central government dominates the major responsibilities outlined by Government Regulation No. 38/2007. Unfortunately, these responsibilities are more related to placement procedure for example issuing (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. Related to the migrant workers, the responsibilities of central government include (i) issuing overseas worker ID card (KTKLN); (ii) constructing computerized data system of overseas employment (SISKO TKLN); and (iii) carryingout the final predeparture briefing (PAP). Power struggle between Kemnakertrans and BNP2TKI takes place in these responsibilities. 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. In reality, these local governments have nothing to do with and cannot access the data of this fee.

Meanwhile, local government is assigned much 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 which used to be PPTKIS' tasks under Law No. 39/2004, and some other responsibilities to support the central government's duties.

All together Government Regulation No. 38/2007 outlines thirteen responsibilities of local government which includes: (i) information dissemination; (ii) registration of the workers; (iii) selection of the workers; (iv) supervision of recruitment; (v) facilitation of bilateral and multilateral agreement implementation; (vi) permit to establish PPTKIS [1] branch office; (vii) recommendation of worker's passport; (viii) information dissemination regarding SISKO

[1]Private Recruitment Agency.

TKLN[2] and supervision of protection fee (USD15) compliance; (ix) socialization of the contents of placement and work contracts; (x) assessment and validation of placement contract; (xi) assistance, supervision, and monitoring of placement and protection of the migrants; (xii) permit; (xiii) home return service.

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

3. Policy gap and protection *perda*

Local initiatives in the form of the passing of *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 the local governments' roles and responsibilities in line with the mandate of Law No. 39/2004 as well as Government Regulation No. 38/2007.

Second, *perda* can state the specific needs of *kabupaten/kota* which cannot be accommodated by Law No. 39/2004. Such issues as main destination and cost structure are locally specific and, therefore, can be accommodated by *perda*. 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 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 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. The question is now whether we should still establish a law whose implementation and enforcement are very slow or cling to the evidence and abandon the idea of having a *perda*? With the four reasons mentioned earlier as the support, we should bring the establishment of protection *perda* to the fore. However, lack of implementation is not a problem that can be solved overnight. It can only be solved slowly but surely. The ultimate desire for establishing protection *perda* is that, in the long run, it can serve as a guide for civil society behaviors and attitudes that respect migrant workers. We, therefore, should not abandon the idea until the lack of implementation is solved.

[2]Computerized System of Overseas Employment.

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

We constructed a typology of two general types: nonspecific (extractive) and specific (nonextractive) *perda*. For the specific *perda* related to overseas employment, the *perda* can be grouped into four types of *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 private recruitment agency (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. The 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.

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 (Q1 to Q3) 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 the number of migrant workers. Third, out of the 127 perda, a majority of 81.1% *perda* and 14.2% others fall in type-1 and type-2 *perda* respectively, while only 2.4% *perda* 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 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 protection *perda* and its enabling conditions

Our field research shows that each case 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 which was too short for Ponorogo and too long for Blitar do not appear to be good. However, the optimal duration for Lombok Barat did not apply for Lombok Tengah. The fact that the Lombok Barat *perda* uses Law No. 39/2004 as its substance was the reason of its rejection in Lombok Tengah. However, the substance of the *perda* in Blitar which 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 is not the case in Lombok Tengah. The

intervention of PPTKIS could be counterbalanced by the high commitment of the parliament. In Ponorogo, PPTKIS had a close relation with members of the parliament who blocked the inclusion of the draft *perda* (*raperda*) in the local legislation program (*prolegda*). In West Nusa Tenggara (NTB) Province, PPTKIS was not aware of the *raperda*. With this favorable context, the *perda* in Lombok Barat succeeded to be legislated, but Lombok Tengah did not. The timing of the elections in Blitar and Lombok Barat turned to be advantageous in approving the *perda*. In the case of Ponorogo and Lombok Tengah, the timing was not favorable. However, the timing of elections can 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 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 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 is a key to be able to effectively execute the mandate of *perda*. At the same time, the frequent transfer of government staff without fit and proper consideration is damaging to the public service delivery, 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 government to protect the migrant workers.

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 favour 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. 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. [3] 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). [4] Moreover, Law No. 39/2004 itself 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 migrants to PPTKIS (private recruitment agency) and article 82 states that the preplacement protection is the responsibility of PPTKIS. [5] Meanwhile 90% of PPTKIS is located in Jakarta. According to Law No. 39/2004 and Government Regulation No. 38/2007 (see Annex 1) 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.

[3]BNP2TKI is one of the mandates of Law No. 39/2004. It was established in 2007 with Presidential Regulation No. 81/2006 concerning the Establishment of BNP2TKI.

[4]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).

[5]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.

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 and Questions

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* 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.

Specifically, the research poses the following questions:

a) What justifies an initiative to formulate protection *perda* at the *kabupaten/kota* level?
b) What kind 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 the *kabupaten/kota* are given technical assistance by the donor agencies to formulate protection *perda*, would they choose to legislate them? What are the enabling condition under which *kabupaten/kota* are able to pass protection *perda*?

1.3 Research Methodology

1.3.1 National and Local Policy Frameworks

The research started with document and literature review on policy frameworks. In this phase, a series of national laws and regulations are assessed to get the overall picture of international migration governance. Focus is given particularly to the nature of authority transfer of migration governance from the central government to the local government, if one exists. Some assessment was made on the extent of decentralization in Indonesia. The law on regional governance as well as the 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 of various *perda* related to overseas employment at the *kabupaten/kota* level, we mapped and classified them based on their characteristics. At the national level, however, there is no single source from which the official and valid list of *perda* in all *kabupaten/kota* is made available. Hence, the best estimate is to find the data from various online sources.[6]

[6](i) http://gudanghukumindonesia.blogspot.com/; (ii) http://www.kppod.org/; (iii) http://www.legalitas.org/.

We are interested in finding out whether *kabupaten/kota* with a bigger size of migrant workers also issue a higher number of *perda* related to overseas employment. The number of migrant workers in each *kabupaten/kota* is aggregated from the 2005 Village Potential Census (Podes).[7] For simplification, the number of migrant workers is divided into five quintiles.

1.3.3 Field work

Field work 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. Kabupaten Blitar and Lombok Barat are *kabupaten* with a protection *perda*. Their neighboring *kabupaten*, Kabupaten Ponorogo and Lombok Tengah are *kabupaten* without a protection *perda*, although both had the draft version of the protection *perda*. Indeed, all four *kabupaten*—through advocating nongovernmental organizations (NGOs)—received technical assistance from donor agencies to formulate protection *perda*.

However, implementation problems of protection *perda* in Kabupaten 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 Kabupaten 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 opinion resulted in the *perda* being revised. Meanwhile, Perda No. 5/2008 of Kabupaten Lombok Barat had been implemented slowly owing to the general election as well as the *kabupaten* executive and legislative election. At the time of the fieldwork, the protection commission was inaugurated by the *bupati* (*kabupaten* head). For this reason, the fieldwork only observed the local reform on paper rather than in practice.

The initial part of the fieldwork involved consultation with local government officials, local NGOs, migrant workers' associations, and private recruitment agents. 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 migrants, or their families were invited to discuss the emigration issues they encounter in focus group discussions (FGDs). 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. 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.

The initial findings from the stakeholder consultation and village-level FGDs were then presented in the *kabupaten*-level FGDs. At this stage, local government officials, private recruitment agencies, and migrant workers' associations were invited again to give their comments and feedback. While this served as triangulation to confirm initial findings, the research team would make use of their presence by presenting the hopes and aspirations of the migrant workers and initiating further policy engagement in protecting migrant workers. 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).

[7]The 2005 Podes involves not less than 75,000 villages.

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 *kabupaten/kota* level, we will not discuss *perda* at the provincial level.

Second, the research has been limited with access to the official copy of *perda*. Therefore, the only proxy is the reported list of *perda* related to overseas employment available online. The list includes the number of *perda* and the title. Sometimes online sources provide the copy of the *perda*, but most of the time only the number and the title (see Annex 3). This means that the list of 127 *perda* makes up only some parts of the hundreds of *perda* out there that we could not extract. Our findings, then, only indicate the characteristic 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 Kabupaten 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 the protection *perda*.

1.5 Structure of the Report

Chapter 1 presents background information which is the basic arguments of centralistic vs. decentralistic emigration management. 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 local government's roles and responsibilities according to the Law No. 39/2004 and to Government Regulation No. 38/2007. In chapter 3 we construct typology of *perda* related to overseas employment. Here, we do the mapping analysis and draw some interesting results. Furthermore, we discuss the findings of our field work in chapter 4. Specifically, we do textual analysis of the *perda* of Kabupaten Blitar and Lombok Barat and elaborate the legal drafting process before drawing some lessons learned on the enabling conditions under which *perda* could be passed in Kabupaten Blitar and Lombok Barat.

II. NATIONAL REGULATORY FRAMEWORK

This chapter basically reviews the Law No. 39/2004. Focus is particularly given on one of its weaknesses, its delineation problem. The chapter starts with the review of weaknesses in Law No. 39/2004. The problem of intergovernmental relationship in Government Regulation No. 38/2007 is also overviewed. Furthermore, lack of delineation of authority at the central level triggers dualism and power struggle between the Ministry of Labor and Transmigration (Kemnakertrans) 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 the Law No. 39/2004, which elicit policy gaps that need to be potentially filled by the *kabupaten/kota* government.

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

The principle criticism against the Law No. 39/2004 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 the Law No. 39/2004. Article 39 instructs private recruitment agencies to bear all costs except stated otherwise. However, Article 76 (1) and (2) of the Law No. 39/2004 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, Law No. 39/2004 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 (see box 1). 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*.

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 Provincial Agency for Labor and Transmigration (Disnakertrans). On 15 December 2008, the governor of NTB passed Gubernatorial Regulation No. 32/2008 concerning 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. For example, they can get information service, receive an overseas worker's ID card (KTKLN), pay their compulsory US$15 assistance and development fee, pay the insurance premium, get tax-free letter, attend pre-departure training, and receive their work contract; all of them in one place.[8] Therefore, the OSS accommodates a number of agencies, namely the BP3TKI, NTB's Provincial Disnakertrans, the 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.[9] 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 Provincial Disnakertrans. If it is to become an independent provincial agency, it should have its own staff, capable of running its daily operation. Indeed, at present, the OSS resides in one of NTB's provincial government's properties, while its office is run by ten staff of the BP3TKI and two staff of NTB's Provincial Disnakertrans. 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 MS (NGO activist, male, about 50 years old, 23 October 2010); IKS (BP3TKI official, male, about 50 years old, 19 October 2010); K (NGO activist, male, about 40 years old, 25 October 2010); and MA (chairman of the PPTKIS[10] Association in NTB, about 50 years old, 25 October 2010).

Second, provisions for supervision (article 92(3)) and supervision mechanisms (article 93) are yet to be completed. The very articles promise to further elaboration of supervision provision in government regulation. Seven years have passed, the promise was never materialized. Similarly, reporting mechanism of supervision – 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.

[8]Before 2011, each Indonesian citizen leaving the country has to bear the tax of Rp1,500,000, unless owning a Tax Identification Number (NPWP). In early 2011, this tax was officially cancelled. Information of the cancellation has not reached some PPTKIS interviewed.

[9]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* Disnakertrans, and other relevant institutions. This *permenakertrans*, however, does not address the authority question.

[10]Private recruitment agency.

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 central government (see column 1 of Annex 1). 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. The local government is mainly responsible for the preplacement stage, for example, various activities in the recruitment of the workers (see column 3 of Annex 1).

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

a) Recruitment process: (1) to have the prospective workers registered (Article 36), (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) Permit of PPTKIS: to have the private recruitment agencies registered (Article 37);
c) Passport recommendation: to give recommendation to the 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 supervisory mechanism to the minister (Article 93); and
f) Investigation of violations: to act as an investigator in case of a violation (Article 101).

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 (see Annex 2). 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

(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 (Article 36, 37 of the law)	Registration (A. 22 of the law)	Facilitation of bilateral and multilateral agreementsimplementation
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.

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

NGOs such Komnas Perempuan, Ecosoc Rights, UNIFEM, and Migrant Care maintain their support for the decentralization of emigration governance.[11] 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 specificed that gender and human right issues are missing in the Law No. 39/2004 and, therefore, advocated the formulation of *perda* with the perspectives of gender and human rights (Komnas Perempuan, 2006a and 2006b). The Institute for Ecosoc Rights and Trade Union Rights Center (2008a) has also assisted Kabupaten Banyumas, Jember, and Tulang Bawang in formulating their *perda* considering that protection is almost entirely absent in the 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 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.

[11]This information was obtained from interviews with AH (NGO activist, female, about 30 years old, 2 October 2009), SWE (NGO activist, female, 35 years old, 5 October 2009), SP (NGO activist, female, about 45 years old, 23 October 2009), YC (NGO activist, female, about 45 years old, 1 April 2010), and DF (NGO activist, female, about 35 years old, 19 April 2010).

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' roles and responsibilities in line with the mandate of the Law No. 39/2004 and Government Regulation No. 38/2007.

Second, a *perda* can state specific needs of the *kabupaten/kota* which cannot be accommodated by the Law No. 39/2004. 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

To explain the general regulatory framework at the *kabupaten* level, this chapter particularly analyses *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.[12] 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 is necessary before doing the mapping analysis. Mapping analysis itself is an exercise where the *kabupaten* according to their *perda* types are overlaid with the *kabupaten* according to their 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 concerning Regional Governance and Law No. 33/204 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' 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*.[13]

[12] 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.

[13] Latest data from Directorate General of Fiscal Balance, Ministry of Finance (http://www.djpk. depkeu.go.id /datadjpk/72/).

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 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

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

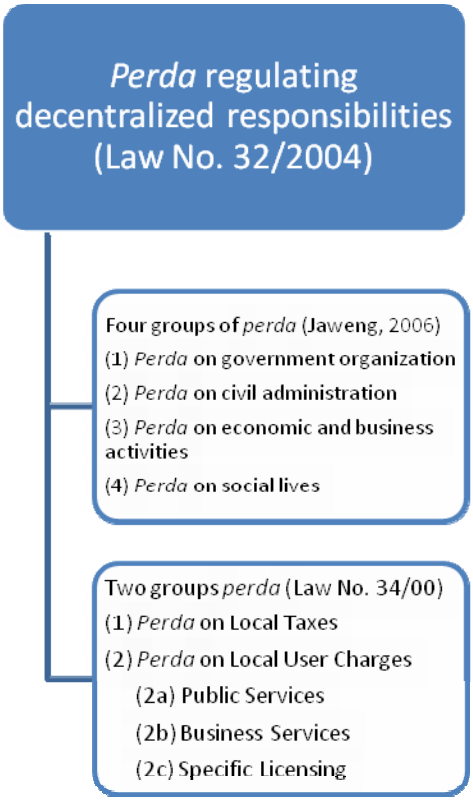
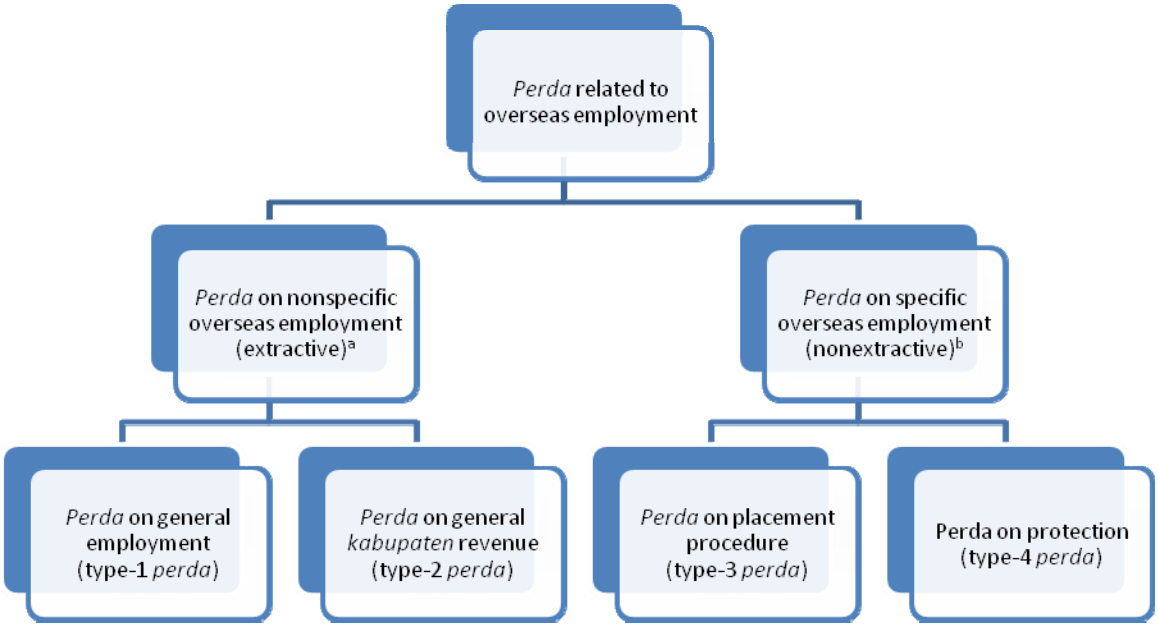


Figure 1. General categories of *perda*

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 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).



[a]Title of *perda* does not specifically mention overseas employment.
[b]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.[14] 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).[15] 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 (see Annex 3).

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 (see Annex 3).

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

[14]*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*.

[15]*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 Law No. 39/2004 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.[16]

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 (Kemenkeu) from which the problematic *perda* are submitted for further re-examination by the Kemdagri.[17] Only after the re-examination can the Kemdagri finally issue a cancellation letter.
This process is notoriously long and winding due to at least three major factors. First, obtaining copies of *perda* is not easy since the *kabupaten/kota* do not send them to Jakarta. In fact, *kabupaten/kota* tend to hide them.[18] 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 Kemenkeu and Kemdagri have to be ready to examine no less than 524 *perda* per month; a task that is next to impossible.[19] Third, the financial consequence of investment-related policy might not appear directly in *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 Mendagri (minister for home affairs) eventually issues a letter ordering the cancellation of the *perda*, the order is not necessarily obeyed by the local authorities. Otherwise, the local government might cancel the *perda* but issue lower legal products with the same content of the cancelled *perda*. These lower legal products might appear as *bupati* regulations or decrees. The span of control of the central government over the existing *perda* is already very low, let alone over these 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.

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[16]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.

[17]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*.

[18]This was the experience of the research team in Kabupaten Ponorogo.

[19]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).

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.

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.

Table 2. *Kabupaten/Kota* with *Perda* Related to Overseas Employment: Indicative Numbers of *Perda* and Migrant Workers[20]

	Q1	Q2	Q3	Q4	Q5
Σ *Kabupaten/Kota* = 418[a]	84	84	84	84	82
Σ Migrant workers in each *kabupaten/kota* issuing *perda*[b]	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[c]	35[c]
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.
[a]The number of *kabupaten/kota* is according to the 2005 Podes.
[b]Data on the number of migrant workers in each *kabupaten/kota* is taken from the 2005 Podes.
[c]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).

[20]See Annex 3 for more detailed information about every *perda*; see Annex 4 for the distribution of *perda* based on their legislated years; and Annex 5 for the distribution of *perda* based on their corresponding provinces.

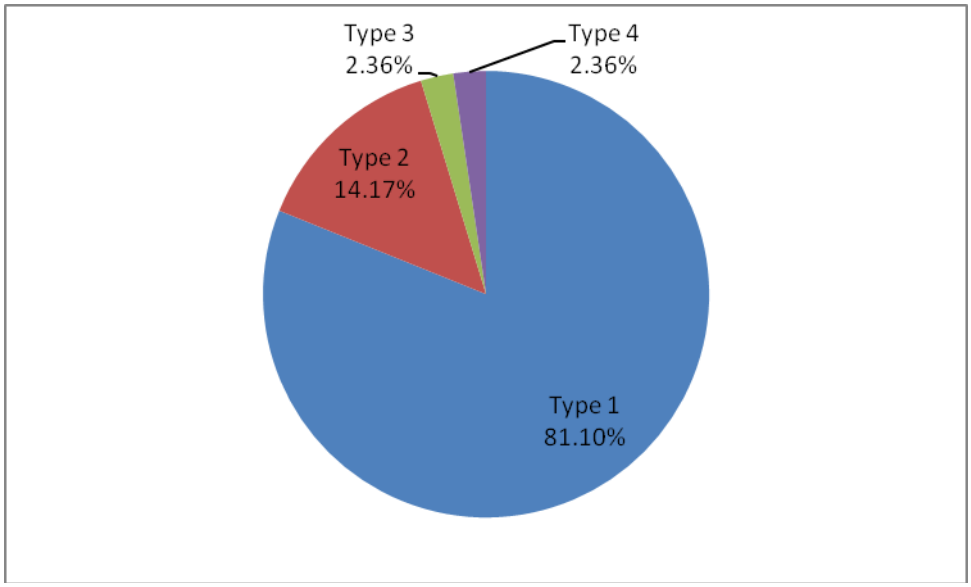


Figure 3. Distribution of *perda* according to their types

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.

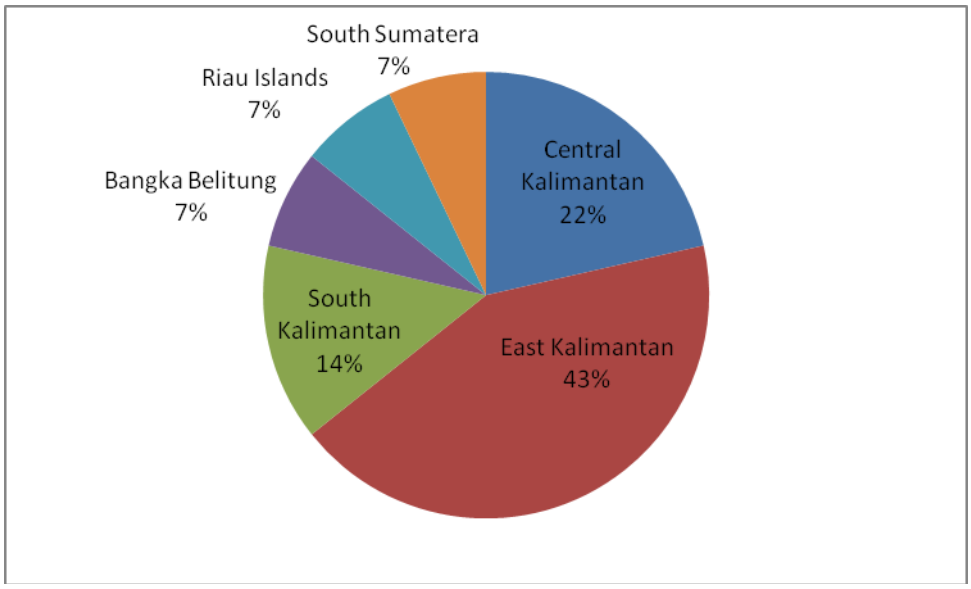


Figure 4. Distribution of corresponding provinces of Q1 *kabupaten/kota*

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 (see also Annex 5). 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.

Table 3. *Kabupaten/Kota*[a] with Multiple *Perda* Related to Overseas Employement

Kabupaten/Kota	Q	No. of Migrant Workers	No./Year	Title of *Perda*	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	1139	11/2002	Business License of Private Recruitment Agency	1
			12/2002	Employment Recruitment Fee	1
Kabupaten Sukoharjo	4	1021	30/2001	Employment Permit Fee	1
			31/2001	Employment Service Fee	1
Kabupaten Dompu	4	2802	16/2001	Employment Service Fee	1
			20/2001	Administration Fee	2
Kabupaten Bima	5	5853	158/2006[a]	Employment Service	1
			25/2001	Administration Fee	2
Kabupaten Cianjur	5	49126	8/2001	Administration Fee	2
			15/2002	Protection of Indonesian Migrant Workers	3
Kabupaten Jember	5	14469	12/2003	Employment Fee	1
			5/2008	Service, Placement, and Protection of Indonesian Migrant Workers	3
Kabupaten Sumbawa	5	8304	12/2003	Employment Service Fee	1
			21/2007	Protection and Empowerment of Indonesian Migrant Workers	4
Kabupaten Lombok Barat	5	18237	13/2002	Other Legitimate Local Revenues	2
			5/2008	Protection of Indonesian Migrant Workers	4

Source: Author's calculation.
[a]*Bupati* decree.

Fourth, the typology we made is not necessarily mutually exclusive. Table 3 highlights that 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

This chapter answers the last research question posed in this study. We compared and contrasted the *perda* from Kabupaten Blitar and Lombok Barat. And then, textual analysis is conducted on the elaboration of local governments' roles in the Law No. 39/2004 and in the *perda* from Blitar and Lombok Barat. Furthermore, the discussion is made on the legal drafting process in the four research *kabupaten*. After that, it examines why Blitar and Lombok Barat were successful, while Ponorogo and Lombok Tengah which apparently had had the draft 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 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 *lkota*level.[21] 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/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.[22] 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 Kabupaten 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 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.

[21]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).

[22]Interview with MS (NGO activist, male, about 50 years old, 24 October 2010).

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

Kabupaten Blitar (Perda No. 16/2008)	Kabupaten Lombok Barat (Perda No. 5/2008)
Establishment (Article. 25):	***Establishment (Article. 20):***
Established by the parliament, but authorized by the *bupati*; 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 *bupati* decree	Established by the *bupati* after being selected by a team consisting of five people (academicians, 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
Responsibilities (Article. 26):	***Responsibilities (Article. 23):***
To receive complaints related to violations of 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	To receive complaints; to collect and analyze data related to complaints; to push the Disnakertrans, relevant agencies, and the PPTKIS to solve cases of the migrant workers; to mediate parties in dispute; to coordinate with relevant institutions from other *kabupaten* or provinces
	Authorities (a. 24):
	To request info regarding migrant workers' cases from the PPTKIS and responsible officials; to invite parties for consultation and mediation
Reporting (Article. 26):	***Reporting (Article. 25):***
To report to the *bupati* annually	To report to the *bupati* biannually

Source: Perda No. 16/2008 of Kabupaten Blitar and Perda No. 5/2008 of Kabupaten Lombok Barat.
Note: (…) refers to the number of article.

4.1.2 Roles and Responsibilities of the Local Government

Table 5 compares local governments' roles and responsibilities as attributed by the Law No. 39/2004 and those stipulated by the *perda* of Kabupaten Blitar and 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 the 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 Disnakertrans to check the validity of ID documents. Similarly, the roles and responsibilities of the Disnakertrans are also stronger in the area of placement contract. Blitar's *perda* requires the Disnakertrans 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 6 days after it passes the selection process. In addition, the supervisory roles of the Disnakertrans are made clearer in the *perda* of both *kabupaten* than in Law No. 39/2004.

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

Roles and Responsibilities	Law No. 39/2004	Kabupaten Blitar (Perda No. 16/2008)	Kabupaten Lombok Barat (Perda No. 5/2008)
Registration	To register prospective migrant workers (Article. 36)	To check validity of ID documents (A. 23)	To check the validity of ID documents (A. 12)
Placement contract	The Disnakertrans should be informed of the placement contract (A. 38). The PPTKIS should send a copy of it to the Disnakertrans (A. 51).	To be signed in front of the officer of Disnakertrans (A. 11) To get a copy of it (A. 16) To ensure that each worker signs the contract within 6 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 Disnakertrans is to appoint one or two officers to supervise the PPTKIS (A. 22).	The Disnakertrans has to supervise the existence and operation of the PPTKIS. The Disnakertrans has to get a biannual report from the PPTKIS (A. 19).
Supervisory mechanism	The Disnakertrans reports the supervision of the placement and protection of migrant workers to the minister (A. 93).	---	The Disnakertrans is to report to the provincial labor agency and the minister for labor in case of a violation by the PPTKIS (A. 19).
Mediation in case of a dispute	The Disnakertrans can help mediate the dispute (A. 85).	The Disnakertrans is to be invited to mediate the dispute (A. 32).	The Disnakertrans/ protection commission receives cases and must follow them up within 10 x 24 hours (A. 27, 28).
Investigation in case of legal offense	The selected officials at the Disnakertrans are given authority to act as special investigators (A. 101).	Appointed local government officials are given the authority to investigate violations against the *perda* (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: (…) refers to the number of article.

Second, a general weakness in the establishment of a law is that the implementing legislation comes much later.[23] 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 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.[24] 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, Lombok Barat's *perda* managed to stipulate it, although only in a basic 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, the *perda* of Kabupaten Blitar and Lombok Barat offer even more details in specifying local governments' 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 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.

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

[24]When the research team visited the Kabupaten Ponorogo Disnakertrans 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 the Kabupaten Blitar Disnakertrans 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 Local Governments' Roles and Responsibilities in Which the Law No. 39/2004 Promised to Issue Implementing Legislation

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

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: (…) refers to the number of article.
[a]No government regulation has been issued since then.

In early 2008, the Blitar parliament agreed to include the draft *perda* (*raperda*) 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 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.[25] 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.

[25]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.

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.[26] 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.[27]

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*.[28] 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".

Box 2
The Pamphlet of the Kabupaten Blitar Disnakertrans

The Kabupaten Blitar Disnakertrans has taken it seriously to disseminate information to migrant workers.[29] In 2009, the Disnakertrans 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 Disnakertrans. Second, they have to check the ID card of the field staff of the PPTKIS. Third, they should not pay any money until the departure is firm. They can consult the Disnakertrans regarding the payment. Fourth, they have to get a confirmation letter of the documents they submit from the PPTKIS. Finally, working overseas is only allowed for those registered at the Disnakertrans and for those above 21 years of age wishing to work as overseas domestic helpers.

In the pamphlet, the Disnakertrans also warned the migrant workers about the danger of trusting the 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 done through an apprentice programme 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 Disnakertrans 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 Disnakertrans encourages the migrant workers to look for more information by:
(i) visiting http://blitarkab.go.id;
(ii) sending an email to disnakertrans_kabblitar@yahoo.go.id[30];
(iii) visiting the Disnakertrans at Jl. Imam Bonjol No. 7; or
(iv) calling the Disnaketrans at 0342-8001407.

Source: Pamphlet of the Kabupaten Blitar Disnakertrans (2009).

[26]Discussion with some officials at the labor agency on 21 June 2010.

[27]Discussion with an SBMB activist (MS) on 21 June 2010.

[28]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.

[29]In four research areas, only Blitar was observed to distribute pamphlets.

[30]It might mean disnakertrans_kabblitar@yahoo.co.id.

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.

4.2.2 Kabupaten Lombok Barat[31]

In 2006, local NGOs—Koslata and the Association of Five Ideas (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*.

[31]Interviews with S (Koslata officer, male, about 50 years old, 24 October 2010) and H (PPK officer, about 45 years old, 21 October 2010).

4.2.3 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*.[32] 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.[33] 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.

4.2.4 Kabupaten Lombok Tengah

In Kabupaten Lombok Tengah, the preparation for the legal drafting began in 2004 when PPK, a local NGO, approached the labor 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.[34] One important reason of the rejection was that the substance of the *perda* was duplicating the Law No. 39/2004 and, therefore, it would be of no urgent use.[35]

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*, we constructed Table 7. 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

[32]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.

[33]Interview with an officer from the Protection Commission of Women and Children named R (female, about 30 years old, 28 June 2010).

[34]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*.

[35]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 Law No. 39/2004, the executive and legislative in these two *kabupaten* were not interested in and did not show commitment to passing them.[36]

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.[37] 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
Prolegda	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 *perda*	18 December 2008[b]	14 March 2008	---	---
Initiator of *perda*	Legislative's initiative	Executive's initiative	Supposed to be the executive's initiative	Supposed to be the executive's initiative
Substance of *perda*[a]	Protection	Protection	Placement	Placement

[a]Author's review.
[b]It was the date when the *bupati* signed the *perda*.

[36]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 Law No. 39/2004", as it could be just an excuse to reject a local initiative.

[37]Interviews with parliament members: GT (male, about 40 years old, 22 June 2010) and S (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 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*.[38] Therefore, the capacity of NGOs to convince them to join the policy process is very important.[39] 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.

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.[40] 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. 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.[41] 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.[42] 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.[43] 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.[44] In addition, many fear the insufficient budget and capacity to carry out the mandate of the *perda*.[45] In Lombok Barat, an informant from

[38]These officials were included in the legal drafting team.

[39]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.

[40]Interview with MS (NGO activist, male, about 50 years old, 23 October 2010).

[41]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).

[42]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).

[43]Interview with an informant from the Kabupaten Lombok Tengah Disnakertrans named W (male, about 50 years old, 29 October 2010).

[44]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).

[45]Interview with an informant from the Bappeda of Ponorogo named M (male, about 50 years old, 28 June 2010).

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.[46] 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 thanks to the development of trust over some decades.[47] 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.

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 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[a]	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

[a]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).

[46]In 2010, the budget of the protection commission came from the Revised APBD, the sustainability of which was in question.

[47]The history of NGO movement in NTB dates back to 1982 (Dahlan, 2000), which is much earlier than the NGO movement in East Java.

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.[48] Because of this, the PPTKIS were not aware of the *perda* in Lombok Barat.[49] 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*.[50] 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.

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 the 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 agency. The law says nothing of 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, the 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 flee 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 the 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 an informant from an NGO, K (male, about 40 years old, 28 October 2010).

[48]Interview with MS (NGO activist, male, about 50 years old, 23 October 2010).

[49]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).

[50]Interview with an officer from the Protection Commission of Women and Children named R (female, about 30 years old, 28 June 2010).

However, compared to Lombok Barat, the *perda* of 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 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 (Article. 6) 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 monitor and protect workers in the destination country; to take care of the sick workers or passed away workers; to organize the return of the workers (A. 14)	To establish a branch office in NTB; to establish a service office in Lombok Barat (A. 4) To appoint field officers (to recruit who are either the staff or nonstaff); to equip the field officers with ID card legalized by the *kabupaten* labor agency (A. 5) To submit written report on the progress of the 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: (…) refers to the article number of the *perda*.

4.3.3 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 10).

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 *kabupaten* 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 11).

Table 11. Political Events in Kabupaten Blitar and Lombok Barat

Political Events	Blitar	Lombok Barat
Year of *Prolegda*	2008	2007
Date of *perda* 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.[51] 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.

The transfer of government staff was unanimously considered to weaken public service delivery (see Box 4). 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.

[51]Interview with an informant from PPK named H (female, about 40 years old, 21 October 2010).

Box 4
Damaging Aspect of Decentralization: Transfer of Staff at the Local Level

Transfer of staff has 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/mayor* 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 agency, take the side of any of the *pilkada* candidates? The answer is simple: You are damned if you do and damned all the same if you do not. The transfer 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 the tendency of having a transfer of staff has become worse and more frequent. In the first direct *pilkada*, only the first echelon of staff, which are the local agency heads, were transferred. Now, it has included echelon two and even three.

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 officer 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: Interview with informants from Asosiasi Buruh Migran Bumi Gora of Lombok Tengah: M (female, about 40 years old, 29 October 2010) and S (female, about 30 years old, 29 October 2010); an informant from BPS of Lombok Tengah: S (male, about 40 years old, 29 October 2010); an informant from the Lombok Tengah Disnakertrans: W (male, about 50 years old, 29 October 2010); and an informant from an NGO: K (male, about 40 years old, 28 October 2010).

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.

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 Law No. 39/2004 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 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 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 Law No. 39/2004 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 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 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 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 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 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 the 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?

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's/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: stakeholders and the relationships among them; and the external factors which are out of the control of the stakeholders.

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 Law No. 39/2004 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.

LIST OF REFERENCES

Ananta, A. (2009) *Estimating the Value of the Business of Sending Low-skilled Workers Abroad: An Indonesian Case*. Paper presented at XXVI IUSSP International Population Conference in Morocco: 27 September – 2 October 2009 [online] <http://iussp2009.princeton.edu/download. aspx?submissionId=91804> [29 October 2010].

Ananta, Aris, Arifin, Evi N. (2008) *Demographic and Population Mobility Transitions in Indonesia* [online] <http://www.pecc.org/resources/doc_view/689-demographic-and-population-mobility-transitions-in-indonesia> [6 June 2011].

Bachtiar, Palmira P., Deswanto Marbun, and Sulton Mawardi (2009) *Iklim Usaha di Kabupaten Flores Timur: Kajian Kondisi Perekonomian dan Regulasi Usaha* [Business Climate in Kabupaten Flores Timur: Economic and Regulatory Review] [online] <http://smeru.or.id/report/research/iklimusahakupang/iklimusahaflotim_ind.pdf>.

BNP2TKI (2009) *Jumhur Tolak Paspor TKI Non Rekom* [Jumhur Rejected Indonesian Migrant Workers' Passports without Recommendation] [online] <http://www. bnp2tki.go.id/berita-mainmenu-231/486-jumhur-tolak-paspor-tki-non-rekom.html> [6 June 2011].

BNP2TKI (2011) *Pasca Rakernis, BNP2TKI Mantapkan Program 2011* [After the BNP2TKI Technical Meeting, the BNP2TKI Improved the 2011 Programs] [online] <http://www.bnp2tki.go.id/berita-mainmenu-231/3781-pasca-rakernis-bnp2tki-mantapkan-program-2011.html> [27 May 2011].

Dahlan, Ali (2000) NGO Movement in West Nusa Tenggara: A Comparison. [Gerakan Ornop di Nusa Tenggara Barat: Sebuah Perbandingan] [online] <http://www.smeru.or.id/report/workshop/prosiseminar/prosidwawasanlsmpp5.pdf> [6 May 2011].

Jaweng, Robert Endi (2006) *Ikhwal Perda Bermasalah* [About Problematic *Perda*] [online] <http://www.docstoc.com/docs/7907315/Scan-Ihwal-Perda-Bermasalah2> [6 June 2011].

Komnas Perempuan (2006a) *Membangun Peraturan Daerah tentang Buruh Migran yang Berperspektif HAM dan Berkeadilan Gender* [Drafting Protection *Perda* with the Perspectives of Human Rights and Gender] [online] <http://www. komnasperempuan.or.id/wp-content/uploads/2009/01/4-membangun-peraturan-daerah-tentang-buruh-migran-yang-berperspektif-ham-dan-berkeadilan-gender1.pdf> [8 November 2010].

Komnas Perempuan (2006b) *Panduan Menyusun Peraturan Daerah tentang Perlindungan Buruh Migran Indonesia Berperspektif Hak Asasi Manusia* [Guideline for Establishing Local Regulation concerning the Protection of Indonesian Migrant Workers with the Perspectives of Human Rights and Gender] [online] <http:// www.komnasperempuan.or.id/2010/08/panduan-menyusun-peraturan-daerah-tentang-perlindungan-buruh-migran-indonesia-berperspektif-hak-asasi-manusia/> [26 Januari 2010].

Mawardi, Sulton, Deswanto Marbun, and Palmira Permata Bachtiar (2009) *Iklim Usaha di Kota Kupang: Kajian Kondisi Perekonomian dan Regulasi Usaha* [Business Climate in Kota Kupang: Economic and Regulatory Review] [online] <http://smeru.or.id /report/research/iklimusahakupang/iklimusahakupang_ind.pdf> [6 June 2011].

Naekma and I Wayan Pageh (2009) *Placement and Protection of Indonesian Migrant Workers* [online] <http://www.bnp2tki.go.id/hasil-penelitian-mainmenu-276/975-penempatan-dan-perlindungan-tenaga-kerja-indonesia.html> [22 March 2010].

Pambudhi, Agung (2003) *Permasalahan Signifikan Peraturan Daerah (Pungutan) di Beberapa Sektor Usaha* [Key Issues in Local Regulations (Levies) in Several Business Sectors] [online] <http://pdf.usaid.gov/pdf_docs/PNACU425.pdf> [2 June 2011].

Raksaka, Mahi (2002) 'Managing Local Revenue in Indonesia.' International Studies Program of Andrew Young School of Policy Studies, Georgia State University, Atlanta, Working Paper 02-28 December 2002 <http://aysps.gsu.edu/isp/files/ispwp0228.pdf > [13 July 2011]

Satriyo, Hana A., Adi Abidin, Hari Kusdaryanto, and Luce Agnes Bulosan (2003) *Indonesia Rapid Decentralization Appraisal (IRDA) Third Report*. Jakarta: The Asia Foundation.

Satriyo, Hana A., Alam Surya Putra, Adi Abidin, Hari Kusdaryanto, and Luce Agnes Bulosan (2004) *Indonesia Rapid Decentralization Appraisal (IRDA) Fourth Report*. Jakarta: The Asia Foundation.

Soesastro, Hadi (2001) *Regional Autonomy and Free Internal Trade* [online] <http://www.pacific.net.id /pakar/hadisusastro/010522.html> [2 June 2011].

The Institute for Ecosoc Rights and Trade Union Rights Center (2008a) *Menangani Perbudakan Modern dari Desa* [Handling Modern Slavery from the Village]. Jakarta: The Institute for Ecosoc Rights and Trade Union Rights Center.

The Institute for Ecosoc Rights and Trade Union Rights Center (2008b) *Puluhan PJTKI Ancam Hengkang Jika Raperda Perlindungan TKI Disahkan* [Many PJTKI Threaten to Move Out if *Raperda* on the Protection of TKI is Legislated] [online] <http://ecosoc-monitor.blogspot.com/2008/08/puluhan-pjtki-ancam-hengkang-jika.html> [3 March 2010].

Widiarto, A. E. (2010) *Judicial Analysis of Perda No. 16/2008 concerning the Protection of Blitar Migrant Workers in Foreign Countries*. Unpublished, Malang.

Government Laws and Regulations

Law No. 13/2003 concerning Labor (Indonesian Version).

Law No. 32/2004 concerning Regional Governance (Indonesian Version).

Law No. 34/2000 concerning Local Taxes and *Retribusi* and its revision in Law No. 28/2009 concerning Local Taxes and *Retribusi* (Indonesian Version).

Law No. 39/2004 concerning the Placement and Protection of Indonesian Migrant Workers (Indonesian Version).

Presidential Regulation No. 81/2006 concerning the Establishment of the BNP2TKI.

Government Regulation No. 38/2007 concerning Division of Affairs between National and Subnational Governments

ANNEXES

Annex 1. Intergovernmental Responsibilities in Terms of Overseas Employment

Central Government	Provincial Government	Local Government
1a. Assistance, control, and supervision of the placement of overseas employment		1a. Information dissemination, registration, and selection of prospective migrants at the *kabupaten*/*kota* level
1b. Operator of the G-to-G placement of overseas employment	1b. —	1b. Supervision of recruitment of prospective migrants at the *kabupaten*/*kota* 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 *kabupaten*/*kota* level
3. Issuing: (i) SIPPTKIS or SIUP[52] 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 *kabupaten*/*kota* 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 SISKO TKLN and supervision of protection fee compliance	5. Information distribution on SISKO TKLN and supervision of protection fee compliance at the provincial level	5. Information distribution on SISKO TKLN and supervision of protection fee compliance at the provincial 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 *kabupaten*/*kota* 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 of 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 *kabupaten*/*kota* 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 *kabupaten*/*kota* level
8c. Setting up of the standard and appointment of institutions related to placement (insurance companies, banks, medical clinics)	8c. —	8c. —
9. Assistance in home return and deportation nationally	9. Assistance in home return at the arrival terminal of the migrant workers at the provincial level	9. Home return service of TKI from *kabupaten*/*kota*.

[52]Business license.

Annex 2. Comparison of the Local Government's Responsibilities

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

Note: [a]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.

Annex 3. Typology of *Perda* Related to Overseas Employment

TYPE-1 *PERDA*					
Quantile	**# migrants[a]**	***Kabupaten/Kota***	**Province**	**No./Year**	**Title of *Perda***
1	0	Kabupaten Berau	East Kalimantan	18/2002	Employment service fee[a]
1	0	Kabupaten Murung Raya	Central Kalimantan	22/2003	Employment service fee[a]
1	1	Kota Samarinda	East Kalimantan	10/2001	Employment service fee[a]
1	3	Kota Banjarbaru	South Kalimantan	10/2002	Employment service fee[a]
1	5	Kabupaten Bangka	Bangka Belitung	8/2003	Employment service fee[a]
1	9	Kabupaten Pelalawan	Riau Islands	12/2003	Workers placement and protection fee[a]
1	10	Kota Bontang	East Kalimantan	6/2002	Employment service fee[a]
1	10	Kota Bontang	East Kalimantan	7/2002	Employment permit fee
1	13	Kota Prabumulih	South Sumatera	4/2003	Employment service fee[a]
1	14	Kabupaten Kutai Kertanegara	East Kalimantan	13/2001	Skill development fund for migrants[a c]
1	14	Kabupaten Kutai Timur	East Kalimantan	18/2002	Skill development fund for migrants[a c]
1	14	Kabupaten Kutai Timur	East Kalimantan	20/2002	Employment service fee
1	14	Kabupaten Kota Baru	South Kalimantan	7/2003	Employment service fee[a]
1	22	Kabupaten Pasir	East Kalimantan	7/2003	Employment service fee[a]
2	36	Kota Lubuk Linggau	South Sumatera	11/2004	Employment service fee
2	39	Kota Magelang	Central Java	19/2001	Employment permit fee[a]
2	56	Kota Bogor	West Java	7/2003	Employment permit fee
2	59	Kota Bitung	North Sulawesi	13/2001	Employment fee[a]
2	63	Kota Banda Aceh	Nanggroe Aceh Darussalam	9/2003	Employment service fee
2	70	Kabupaten Rokan Hulu	Riau Islands	18/2003	Report obligation of vacancy and 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 Sumatera	5/2003	Employment supervision & protection fee
2	112	Kabupaten Malinau	East Kalimantan	16/2002	Employment service fee
2	113	Kota Dumai	Riau Islands	10/2004	Employment
2	114	Kabupaten Musi Banyuasin	South Sumatera	19/2002	Employment service fee[a]
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 [a]
2	149	Kabupaten Tapanuli Tengah	North Sumatera	46/2001	Employment supervision & protection fee
2	168	Kabupaten Luwu Timur	South Sulawesi	16/2006	Employment permit and service fee

2	171	Kabupaten Ogan Komering Ulu	South Sumatera	11/2005	Report obligation of 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 & employers' fee
3	258	Kabupaten Muara Enim	South Sumatera	24/2001	Employment permit
3	282	Kota Bandung	West Java	19/2002	Employment service fee[a b]
3	286	Kota Makassar	South Sulawesi	9/2004	Rules on employment service fee [a]
3	316	Kabupaten Kuantan Singingi	Riau Islands	7/2003	Workers' placement
3	359	Kabupaten Nunukan	East Kalimantan	43/2003	Employment service fee[a]
3	373	Kabupaten Hulu Sungai Selatan	South Kalimantan	14/2002	Employment service fee[a]
3	386	Kabupaten Mamuju	West Sulawesi	9/2002	Employment permit fee[a]
3	431	Kota Cilegon	Banten	12/2004	Employment service fee
3	501	Kabupaten Dairi	North Sumatera	5/2002	Employment
3	504	Kota Surabaya	East Java	1/2003	Employment service fee[a]
3	536	Kota Madiun	East Java	8/2004	Employment service fee[a]
3	595	Kota Kupang	East Nusa Tenggara	14/2007	Employment
3	634	Kabupaten Sidoarjo	East Java	9/2008	Employment service[b]
3	687	Kabupaten Mojokerto	East Java	4/2009	Employment fees
3	697	Kota Binjai	North Sumatera	5/2003	Employment supervision & protection fee
3	738	Kabupaten Bengkulu Utara	Bengkulu	12/2003	Employment service fee[a]
3	755	Kabupaten Pemalang	East Java	5/2008	Employment service fee
3	802	Kota Bandar Lampung	Lampung	10/2003	Employment fee[a]
4	945	Kota Mataram	West Nusa Tenggara	7/2002	Employment service fee[a]
4	1013	Kabupaten Luwu Utara	South Sulawesi	34/2001	Employment permit
4	1021	Kabupaten Sukoharjo	Central Java	30/2001	Employment permit fee
4	1021	Kabupaten Sukoharjo	Central Java	31/2001	Employment service fee
4	1052	Kabupaten Kampar	Riau Islands	20/2003	Employment service fee
4	1110	Kota Palembang	South Sumatera	22/2001	Employment support fee
4	1139	Kabupaten Donggala	Central Sulawesi	11/2002	Private recruitment agency license
4	1139	Kabupaten Donggala	Central Sulawesi	12/2002	Employment recruitment fee
4	1230	Kabupaten Maros	South Sulawesi	18/2002	Employment rules and fee[a]
4	1304	Kabupaten Pasaman	West Sumatera	16/2003	Employment service fee
4	1310	Kabupaten Jeneponto	South Sulawesi	5/2002	Employment service fee
4	1357	Kabupaten Bantul	The Special Region of Yogyakarta (DIY)	1/2005	Employment placement
4	1359	Kabupaten Purbalingga	Central Java	6/2001	Employment permit and service fee
4	1421	Kabupaten Bekasi	West Java	5/2001	Employment service fee[a]
4	1583	Kota Medan	North Sumatera	7/2003	Employment service fee
4	1637	Kabupaten Bogor	West Java	4/2009	Employment license

4	1719	Kota Malang	East Java	13/2007	Rules on employment service fee
4	1954	Kabupaten Aceh Timur	Nanggroe Aceh Darussalam	9/2003	Employment service and permit fee
4	2227	Kabupaten Gowa	South Sulawesi	5/2002	Employment service fee
4	2263	Kabupaten Sikka	East Nusa Tenggara	24/2001	Employment placement fee[a]
4	2487	Kabupaten Sumedang	West Java	6/2002	Employment fee[a]
4	2802	Kabupaten Dompu	West Nusa Tenggara	16/2001	Employment service fee
4	2929	Kabupaten Tasikmalaya	West Java	2/2006	Employment service fee
4	3158	Kabupaten Tana Toraja	South Sulawesi	8/2003	Employment permit fee
4	3534	Kabupaten Banjarnegara	Central Java	3/2003	Migrants' placement
5	4202	Kabupaten Magelang	Central Java	15/2005	Employment permit fee
5	4843	Kabupaten Sragen	Central Java	10/2004	Employment permit fee
5	5388	Kabupaten Pinrang	South Sulawesi	7/2003	Employment service fee
5	5853	Kabupaten Bima	West Nusa Tenggara	158/2006	Employment service
5	6834	Kabupaten Tangerang	West Java	21/2002	Employment service fee
5	7162	Kabupaten Kebumen	Central Java	52/2004	Employment fee[a]
5	8304	Kabupaten Sumbawa	West Nusa Tenggara	12/2003	Employment service fee
5	8879	Kabupaten Lumajang	East Java	28/2004	Employment license
5	10124	Kabupaten Kerinci	Jambi	11/2002	Employment fee[a]
5	10891	Kabupaten Purwakarta	West Java	18/2002	Employment service fee
5	11489	Kabupaten Bone	South Sulawesi	10/2002	Employment permit fee
5	13141	Kabupaten Kediri	East Java	8/2003	Employment service fee[a]
5	14469	Kabupaten Jember	East Java	12/2003	Employment fee[a]
5	17666	Kabupaten Serang	Banten	7/2009	Employment
5	17967	Kabupaten Bandung	West Java	26/2001	Employment permit and service fee
5	19035	Kabupaten Subang	West Java	7/2002	Employment fees[b]
5	25122	Kabupaten Gresik	East Java	14/2005	Employment permit and service fee
5	26896	Kabupaten Ponorogo	East Java	6/2004	Employment service fee[b]
5	29201	Kabupaten Sukabumi	West Java	13/2005	Mobilization of migrant workers
5	32380	Kabupaten Malang	East Java	7/2005	Employment service[b]
5	36192	Kabupaten Karawang	West Java	22/2001	Employment service fee[a]
5	38715	Kabupaten Tulungagung	East Java	12/2002	Employment license
5	57067	Kabupaten Indramayu	West Java	6/2003	Employment fees[a b]

TYPE-2 *PERDA*					
Quantile	**#Migrants**	***Kabupaten/Kota***		**No./Year**	**Title of *Perda***
1	3	Kabupaten Barito Utara	Central Kalimantan	6/2005	Legalization charges[b]
1	13	Kabupaten Kotawaringin Timur	Central Kalimantan	2/2002	Legalization charges[b]
2	157	Kabupaten Musi Rawas	South Sumatera	11/2002	Legalization charges[b]

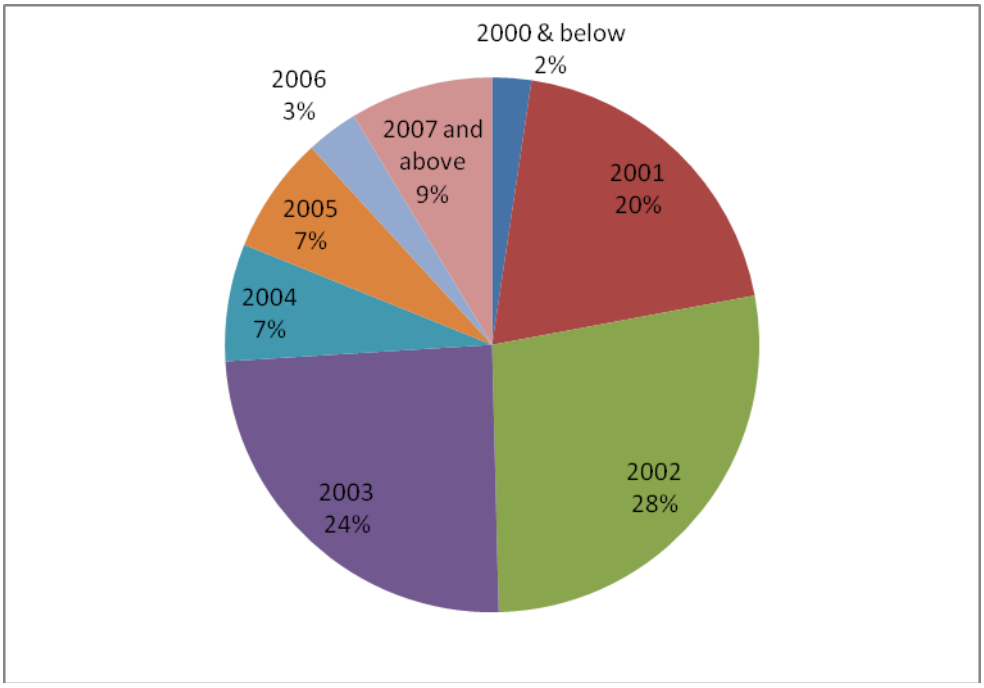
3	297	Kota Tasikmalaya	West Java	23/2003	Legalization charges[b]
4	935	Kabupaten Sidenreng Rappang	South Sulawesi	31/2001	Third party contribution[b]
4	1405	Kabupaten Soppeng	South Sulawesi	11/2001	Third party contribution[b]
4	2802	Kabupaten Dompu	West Nusa Tenggara	20/2001	Legalization charges[b]
5	4581	Kabupaten Jepara	Central Java	17/2001	Administration fee[b]
5	5853	Kabupaten Bima	West Nusa Tenggara	25/2001	Legalization charges
5	5998	Kabupaten Garut	West Java	34/2001	Third party contribution[b]
5	6296	Kabupaten Lembata	East Nusa Tenggara	6/2005	Administration fee[b]
5	6534	Kabupaten Magetan	Central Java	25/2000	Administration fee[b]
5	9754	Kabupaten Banyuwangi	East Java	28/2002	Third party contribution[b]
5	18237	Kabupaten Lombok Barat	West Nusa Tenggara	13/2002	Other legitimate local revenues[b]
5	23750	Kabupaten Flores Timur	East Nusa Tenggara	4/2005	Administration fee
5	37696	Kabupaten Lombok Tengah	West Nusa Tenggara	31/1995	Third party contribution
5	38126	Kabupaten Cirebon	West Java	7/1987	Third party contribution[b]
5	49126	Kabupaten Cianjur	West Java	8/2001	Legalization charges[b]

TYPE-3 *PERDA*					
Quantile	**#Migrants**	***Kabupaten/Kota***	**Province**	**No./Year**	**Title of *Perda***
5	14469	Kabupaten Jember	East Java	5/2008	Service, placement, and protection of Indonesian migrant workers[b]
5	41209	Kabupaten Lombok Timur	East Nusa Tenggara	12/2006	Protection of Indonesian migrant workers[b]
5	49126	Kabupaten Cianjur	West Java	15/2002	Protection of Indonesian migrant workers[b]

TYPE-4 *PERDA*					
Quantile	**#Migrants**	***Kabupaten/Kota***	**Province**	**No./Year**	**Title of *Perda***
5	8304	Kabupaten Sumbawa	West Nusa Tenggara	21/2007	Protection and empowerment of migrant workers[b]
5	18237	Kabupaten Lombok Barat	West Nusa Tenggara	5/2008	Protection of Indonesian migrant workers[b]
5	28430	Kabupaten Blitar	East Java	16/2008	Protection of Indonesian migrant workers in foreign countries[b]

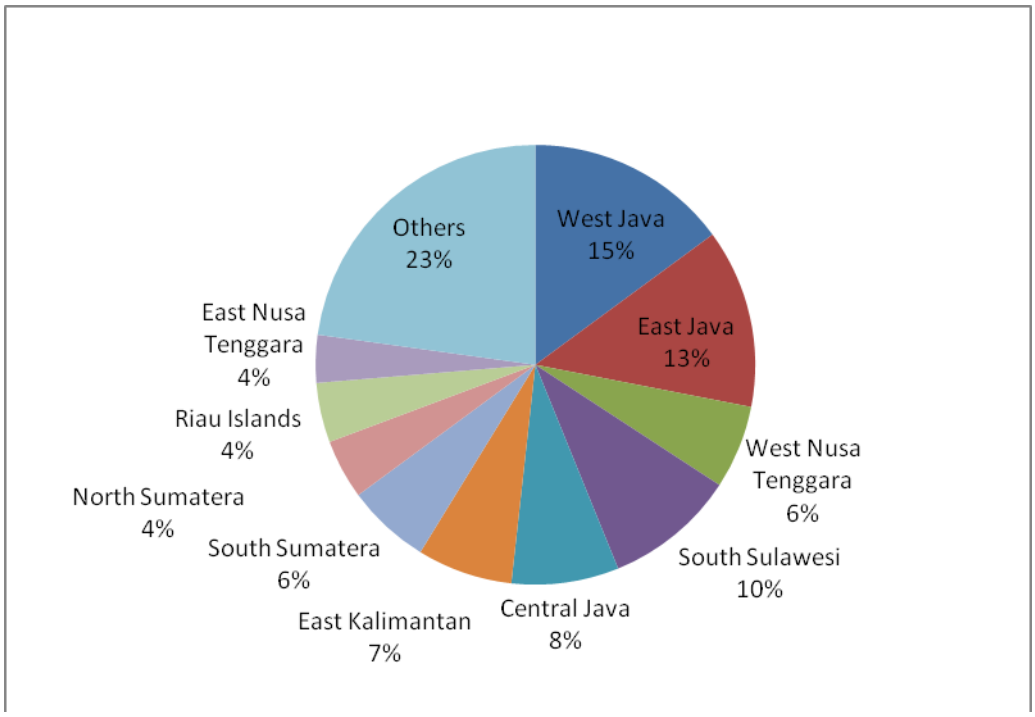
Note: [a]The Ministry of Home Affairs has cancelled this *perda*.
[b]Copy of *perda* is available.
[c]Categorized as type 1 because it was cancelled by the Ministry of Home Affairs. One of the reasons of the cancellation was that the *perda* imposed fee that was burdensome for the investment climate.
[d]Number of migrants based on the 2005 Podes.

Annex 4. Distribution of Perda Based on Their Issuing Year



Note: Total number of *perda* = 127.

Annex 5. Distribution of Corresponding Provinces of the *Kabupaten* Issuing *Perda*



Note: Total number of *kabupaten* = 115.