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FINAL DRAFT

THE GOVERNANCE OF INDONESIAN OVERSEAS EMPLOYMENT IN THE CONTEXT OF DECENTRALIZATION

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List of Abbreviation

APBD	Anggaran Pendapatan Belanja Daerah	Local Budget
Bappeda	Badan Perencanaan Pembangunan Daerah,	Local Agency for Development Planning
BNP2TKI:	Badan Penempatan dan Perlindungan Tenaga Kerja Indonesia	National Agency of Placement and Protection of Indonesian Migrant Workers
BP3TKI	Balai Pelayanan Penempatan dan Perlindungan TKI	Service Center on Placement and Protection of Indonesian Migrant Workers
Dinsosnakertrans (in Ponorogo and Central Lombok Districts)	Dinas Sosial Tenaga Kerja dan Transmigrasi	Local Agency of Social Affairs, Manpower and Transmigration
Disnakertrans (in Blitar and West Lombok Districts)	Dinas Tenaga Kerja dan Transmigrasi	Local Agency of Manpower and Transmigration
EJ	East Java	
FGD	Focus Group Discussion	
JKPS Cahaya	Jaringan Kerja Perlindungan Sosial Cahaya	Social Protection Labour Network
JPIP	Jawa Post Institute of Pro-Otonomy	
Kemdagri	Kementerian Dalam Negeri,	Ministry of Home Affairs
Kemenkeu	Kementerian Keuangan	Ministry of Finance
Kemnakertrans:	Kementerian Tenaga Kerja dan Transmigrasi	Ministry of Manpower and Transmigration
Kepmenakertrans	Keputusan Menteri Tenaga Kerja dan Transmigrasi	Stipulation of Minister of Manpower and Transmigration
Komnas Perempuan	Komisi Nasional Perempuan	National Commission on Anti-violence against Women
KPPOD	Komisi Pemantau Pelaksanaan Otonomi Daerah	Commission on Monitoring the Implementation of Regional Autonomy
KTKLN	Kartu Tanda Kerja Luar Negeri	Overseas Worker ID Card
NGO	Non Government Organization	
OSS	One Stop Service	
P3BM	Paguyuban Peduli Perempuan dan Buruh Migran,	Association for Women and Migrant Workers
P4TKI	Pos Pelayanan Penempatan dan Perlindungan TKI	Service Post on Placement and Protection of Indonesian Migrant Workers
PAP	Pelatihan Akhir Pemberangkatan	Predeparture Training
Perda	Peraturan Daerah	Local Regulation
Permenakertrans	Peraturan Menteri Tenaga Kerja dan Transmigrasi	Regulation of Minister of Manpower and Transmigration

Pilkada	Pemilihan Kepala Daerah	District Executive Election
Podes	Potensi Desa	Village Potential Census
PP	Peraturan Pemerintah	Government Regulation
PPK	Perhimpunan Panca Karsa	United of Five Ideas
PPTKIS	Pelaksana Penempatan Tenaga Kerja Indonesia Swasta	Private Recruitment Agency
Prolegda	Program Legislasi Daerah	Regional Legislation Program
Raperda	Rancangan Peraturan Daerah	Draft of Local Regulation
SBMB	Serikat Buruh Migran Blitar	Blitar Migrant Worker Association
SIP	Surat Izin Penempatan	Mobilization Permit
SISKO TKLN	Sistem Komputerisasi Tenaga Kerja Luar Negeri	Computerized data system of overseas employment
TKI	Tenaga Kerja Indonesia	Indonesian Migrant Worker
UNIFEM		United Nations Development Fund for Women
UU	Undang-Undang	Law
UU PD	Undang-Undang Pemerintahan Daerah	Law of Regional Governance
UU PPTKI	Undang-Undang Penempatan dan Perlindungan Tenaga Kerja Indonesia	Law of Placement and Protection of Indonesian Migrant Workers
WNT	West Nusa Tenggara	

ABSTRACT

This study looked at the emigration governance in the context of decentralized Indonesia. It examined various local initiatives that evolved following the onset decentralization a decade ago. These initiatives materialized in the form of *perda* (peraturan daerah, local regulation). First, we performed a literature review which particularly addressed the issue of *perda* related to overseas employment. Prior to the mapping analysis, a typology was constructed of four possible types of classification. Out of 127 collected *perda*, 81% fell in type 1 (general employment *perda* which is extractive); 14.2% in type 2 (general district's revenue *perda* which is extractive); 2.4% in type 3 (placement procedure *perda* which is non-extractive); and 2.4% in type 4 (protection *perda* which is non-extractive). We found migrant source districts issue both higher number of and higher variety of *perdas* related to overseas employment with type 1 and type 2 being the majority of *perdas* issued and only 3 districts (3.7% of 82 district) issuing type 4. Interestingly, our typology is not necessarily mutually exclusive as districts that pass protection *perdas* do pass extractive *perdas* as well.

Second, we conducted field work in four migrant source districts which were given technical assistance from donor agencies to formulate protection *perda*. In order to understand why only the two districts of Blitar and West Lombok were able to pass protection while the other two districts of Ponorogo and Central Lombok were not able to, we looked at internal factors: stakeholders and the relationships among them; and external factors which are out of the control of the stakeholders. Our field research showed that the policy process in each district was unique and could not be explained in a standard model. The duration of policy process, substance of the *perda*, position of the advocating NGO, intervention of PPTKIS, and the timing of election are the factors whose outcomes are different in each different district. Other factors such as trust and commitment of local government and parliament, strong capacity of NGOs, and strong support from donors also positively influence the success of the process.

EXECUTIVE SUMMARY

Background

Indonesia has become one of the nine major sources of migrant workers in Asia (Ananta, 2008). The Asian economic crisis of 1997/1998 triggered a dramatic increase in migration outflow. In 1994 only 175,187 migrant worked overseas but this figure quickly expanded to 427,619 people in 1999 and hit a record of 748,825 people in 2008 (BNP2TKI, 2009). Following the global financial crisis in 1997/1998, BNP2TKI (2011) recorded declining overseas employment figures from 632,172 people in 2009 and 575,804 people in 2010.

Considering the magnitude of outflow, the task of managing international migration is too huge for the central government to handle alone. Since low skill women make up not less than three quarters of emigration profile, adding to the complexity are the human rights issues that emerge along side this massive outflow of low-skilled female migrants working in the domestic sphere and with the absence of bilateral agreements with some receiving countries.

International migration itself is characterized by a complex nature. It starts with the recruitment process at the village and district levels. The head of BNP2TKI himself has admitted that 80% of the problems migrant workers face are encountered domestically (BNP2TKI, 2008). Major problems such as identity fraud, cheating, extortion, detention, etc. happen at the local level and they should be more effectively handled by the local government.

Unfortunately, the national law has not clearly divided the labor between the central and local government. Overseas employment lies both in the area of employment as well as foreign affairs. According to Law No. 32/2004 concerning Local Governance the former can be decentralized, but not the latter. Those in favor of centralization argue that domestic employment can definitely be decentralized, however overseas employment can not. This poses the question of why overseas workers cannot be treated similarly as their domestic counterpart during preplacement while they are still within the district jurisdiction.

One should not forget that migrant protection is in line with the interest of the local government. Among other gains of emigration, the most tangible impact is the remittance whose significance is much more obvious locally than nationally. For example, at the national level remittance only contributed to 1.6% of GDP in 2006 (Ananta, 2009). This is much less than that of the Philippines' which comparatively reached 13% of GDP in the same year. However, in Blitar and Ponorogo, the ratio of remittance to PDRB reached 4.4% and 6.3% in 2006, respectively. In West Lombok, this ratio in 2006 is even more spectacular, reaching 24.3%.¹

The pains of emigration are also experienced more significantly at the local level. Even if workers are able to work successfully and gain financially, some significant social costs still exist. Problems such as family cohesion, divorce rate, juvenile delinquency, etc. are also more influential at the local rather than national level. It is, therefore in the interest of the local government to provide services for and to protect migrant workers so as to maximize the advantages and minimize the disadvantages of emigration.

¹ Author's calculation East Java in Figure (2007), West Nusa Tenggara in Figure (2007), Bank of Indonesia Kediri Office (2008), (2009), (2010); Bank of Indonesia Mataram Office (2010); Social Economic Indicators (March 2009)

Research Methodology

The research poses the following questions:

1. What justifies initiative to formulate protection *perda* at the district level?
2. What kind of *perda*, related to overseas employment, have local governments issued so far?
3. Is there any correlation between the number of *perdas* related to overseas employment issued and the number of migrants?
4. If the districts are given technical assistance through NGOs in formulating protection *perda*, would the districts choose to legislate it? What are the enabling conditions under which districts are able to pass protection *perda*?

The research design followed these stages:

1. Analysis of national and local policy framework. 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 initiative of local governments to improve public services.
2. A construction of typology of *perdas* related to overseas employment at the local level. To give the idea of various local regulations, we mapped and classified *perdas* related to overseas employment based on their characteristics. Since there is no single source from which the official and valid list of *perdas* in all districts is made available, the best estimate is to find the data from various online sources. Furthermore, the size of migrants in each district is aggregated from the 2008 village potential census. For simplification, migrant size is divided into five quintiles.
3. A case study in four districts. Blitar, Ponorogo, West Lombok and Central Lombok were four migrant source districts receiving assistance from donor agencies to formulate protection *perda*. Only Blitar and West Lombok now have protection *perda*. Field work involved consultation with stakeholders at the district level. Furthermore, two FGDs (Focus Group Discussions) were conducted at the village level with prospective migrants, ex migrants or migrant families: one for men and one for women. Additionally, in depth interviews were held with village and sub-district officials, who are in charge of supporting the prospective migrants in fulfilling their administration requirements. Interviews were also carried out with private recruitment agencies and migrants experiencing abuse - either prior to departure, during work, or after arrival. Finally, one more FGD was carried out at the district level during which the initial findings was presented. At this stage, local government officials, private recruitment agencies, and migrant worker associations are again invited to give their comments and feedback. While this serves as triangulation to confirm initial findings, the research team will make the best use of presence of these stakeholders to communicate the hopes and aspirations of the migrant workers to them so to initiate further policy engagement in protecting migrant workers.

Findings

1. Policy gap and protection *perda*

Institutions and policy frameworks at the national level have demonstrated weaknesses whose impacts would eventually hamper the welfare of migrant workers. Following the establishment of BNP2TKI, dualism of authority in emigration governance at the national level has taken place. The tense between Kemnakertrans and BNP2TKI seemed to decrease with the issue of Permenakertrans No. PER.14/MEN/X/2010 where Kemnakertrans gave back BNP2TKI's authority as the operator of PPTKI. Yet, the implementation of this Permenakertrans is yet to be observed.

Adding to this is the national policy framework, the Law No. 39/2004 or UU PPTKI. Its implementing legislations have been strongly criticized for being biased towards placement procedure of migrant workers. In addition the protection and the clarity of roles and responsibilities of local government have been largely missing. However it is definitely not recommended to wait until the national policy becomes perfect. Instead, local government's initiative has a great potential to fill in existing policy gaps in terms of protection, particularly pre-placement protection. Even in a situation where policy gaps disappear, protection *perda* is still needed for the following reasons. First, the absence of permenakertrans on local government's roles hampers law execution. *Perda* could elaborate and specify the local government's roles in line with UU PPTKI's mandate.

Second, *perda* could state specific needs of the districts which could not be accommodated in UU PPTKI. Issues like main destination and cost structure is locally specific and, hence, *perda* could indicate this. For example, the majority of migrant workers of West and Central Lombok work in Malaysia and the Middle East, while their colleagues from Blitar and Ponorogo head for East Asia. *Perda* in these districts could specifically stipulate cost structure in the destination countries to which their migrants work.

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

Fourth, *perda* clearly stipulate sanctions against violations which take place at the district level. *Perda* could act as a form of shock therapy to any party that usually does the extortion, abuse, and detention prior to the departure. Strong law enforcement afterward would certainly improve migrants' protection.

Finally, the dilemma between having protection *perda* or not having protection *perda* lies in the fact that empirically speaking, implementation and law enforcement of *perda* have been far from sufficient. Thus, the question is: should we still establish law whose implementation and enforcement would be very slow or should we cling to the empirics and abandon the idea of having *perda*? Since we already have four other reasons mentioned earlier, we should bring the establishment of *perda* to the fore. The lack of implementation is not a problem that can be solved overnight. It will be solved slowly but surely. However, the ultimate desire for establishing protection *perda* is that, in the long run, it could serve as the guide for a civil

society behavior and attitude that respects migrant workers. We, therefore, should not abandon this idea until the lack of implementation is solved.

2. Typology and mapping analysis of *perdas* related to overseas employment

We constructed a typology with two general types: nonspecific (extractive) and specific (nonextractive) *perdas*. In specific, *perdas* related to overseas employment can be grouped into of four types of *perdas*

Type 1 *perda* focuses on general employment charges, including overseas employment. These charges are paid by either the workers or by the companies. Type 2 *perda* is about general district revenues, including those from overseas employment. It is formulated more generally than type 1, and therefore, its charges are paid by even larger groups of people. Type 3 *perda* deals with the placement procedure of overseas employment. It does not rule any financial consequences to be borne by either migrant or private recruitment agencies. In some cases, the title explicitly mentions protection of migrant workers, the content regulates the placement procedure heavily and therefore this type is categorized separately from type 4. Type 4 *perda* are concerned with protection of migrant workers. It does not entail any charge and concentrates on what has 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.

In the mapping analysis we found the following. First, in general there exists a correlation between districts with *perdas* related to overseas employment and districts with migrant size. Second, surprisingly, many districts which have few overseas workers (Q1 to Q3) pass type 1 and type 2 *perdas*. These districts are located close to the border with Malaysia and Brunei and have become migrants' transit areas. Moreover, type 1 and type 2 *perdas* are also applicable to districts with domestic migrant workers from which the local governments are also be eager to levy (in what way?). Because of these features, type 1 and type 2 *perdas* tend to spread in districts regardless of the number of overseas migrants. Third, out of 127 *perdas* a majority of 81.1% and 14.2% fall in type 1 and type 2, respectively, with only 2.4% dealing with type 4. Moreover, out of 82 migrant source district only 3 districts (3.7%) have protection *perdas*, while 34 districts (41.5%) are more interested in passing extractive *perdas*. Thus, awareness of local governments to take initiative to protect their migrants 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, districts that pass protection do not cancel their extractive *perdas*. Hence, the districts may protect their migrant workers but at the same time violate the law by taxing the workers, directly or indirectly.

3. Policy process of protection *perda* and its enabling conditions

Our field research showed that each case is unique. It is unique that the outcome could not be explained in a standard model that applies for each observed district. Duration of the policy process which was too short for Ponorogo and too long for Blitar appeared to be not good. However, the optimal duration for West Lombok did not apply for Central Lombok. Substance of the *perda* whose substance is of UU PPTKI was the reason of its rejection in Central Lombok. However, the substance of *perda* in Blitar which was innovative was also the reason why local government and PPTKIS were resistant to it. Furthermore, taking the

position of policy contestation turned to be successful in Blitar, but not in Ponorogo. In the case of West Lombok, the position of policy engagement proved to be more effective, although this is not the situation in Central Lombok. The intervention of PPTKIS could be counterbalanced by high commitment from the parliament. In Ponorogo, PPTKIS had a close relation with members of parliament who blocked the inclusion of *raperda* in the *prolegda*. In West Nusa Tenggara, PPTKIS was not aware of *raperda*. With this favorable context, *perda* in West Lombok succeeds to be legislated, but Central Lombok did not. Timing of elections turned to be advantageous in approving the *perda*. This is the case of Blitar and West Lombok. In the case of Ponorogo and Central Lombok, the timing was not favourable. However, the timing of elections could also be detrimental in the implementation of *perda*. In West Lombok the legislated *perda* had to wait until the election events were over.

Apart from above mentioned factors, we found that: (i) trust and commitment of the local government and local parliament; (ii) strong capacity of NGO; (iii) and strong support of the donor agencies are common factors that positively influence the success of *perda* legislation. Commitment of 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 the protection of migrant workers. Finally, 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.

CHAPTER 1 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 decentralized or centralized matter. It is debatable because overseas employment lies both in the area of employment as well as foreign affairs. Law No. 32/2004 concerning PD (Pemerintahan Daerah, Regional Governance) stipulates that employment is a decentralized matter while foreign not.

On the one hand, those in favour of centralistic governance argue that domestic employment is decentralizable. Overseas employment, however, is not. Naekma and Pageh (2009), for example, echoed that Law No. 13/2003 concerning Manpower (article 33) clearly differentiates domestic and overseas employment. It leaves the latter to be regulated by other law (article 34) which is Law No. 39/2004 concerning UU PPTKI (Undang-Undang Penempatan dan Perlindungan Tenaga Kerja Indonesia, Placement and Protection of Indonesian Migrant Workers). One of the mandates of UU PPTKI is executed with Presidential Regulation No. 81/2006, i.e., the establishment of BNP2TKI (Badan Penempatan dan Perlindungan Tenaga Kerja Indonesia, National Agency of Placement and Protection of Indonesian Migrant Workers). BNP2TKI is a vertical body with 19 units of BP3TKI (Balai Pelayanan Penempatan dan Perlindungan TKI, Service Center on Placement and Protection of Indonesian Migrant Workers) at the provincial level, and 14 units of P4TKI (Pos Pelayanan Penempatan dan Perlindungan TKI, Service Post on Placement and Protection of Indonesian Migrant Workers) only at specific districts (BNP2TKI, 2011). The establishment of this vertical body reinforces the position of the central government that governance of overseas employment is more of a centralistic matter. Moreover, UU PPTKI law itself is never clear about the relationship between BP3TKI and provincial and district governments.

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

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

In this context, this paper analyzes the research from documents as well as field work. In the review of regulatory documents, policy and institutional arrangement at the national level are assessed. In the field work, four districts were visited. Two of them were able to formulate protection perda (peraturan daerah, local regulation) and two were not. While comparing and contrasting the districts' institutional arrangements – both formal and informal – this paper proposes particular conditions under which local governments are best able to make use of their authority in filling the policy gap of migrant protection. At the same time, framing the issue in this way places the emphasis not on the local government per se but on the enabling conditions in which authority is undertaken.

1.2. Research Objectives and Research Questions

The research combines desk review and field work with the following objectives:

1. Analyze the nature of the decentralization of the emigration governance
2. Construct a typology of various *perdas* related to overseas employment which are the district's initiatives
3. Mapping analysis of *perdas* related to overseas employment
4. Assess the enabling conditions under which some districts are able to pass protection regulation for their migrant workers.

Specifically, the research poses the following questions:

1. What justifies an initiative to formulate protection *perda* at the district level?
2. What kind of *perda* related to overseas employment have the local governments issued so far?
3. Is there any correlation between number of *perdas* related overseas employment issued and number of migrants?
4. If the districts are given technical assistance in formulating protection *perda*, would they choose to legislate it? What are the enabling condition under which districts are able to pass protection *perda*?

1.3. Research Design

1.3.1. National and Local Policy Framework

The research will start with document and literature review on policy framework. In this phase, a series of national laws and regulations are assessed to get the overall picture of international migration management. Focus is given particularly to the nature of authority transfer of migration management from central to local government, if it exists. Some assessment is made on the extent of decentralization in Indonesia. UU PD as well as UU PPTKI along with its implementing legislations will be thoroughly studied.

1.3.2. Typology of *perdas* related to overseas employment at the local level

The fast growth phenomenon of *perda* after decentralization is not typical to district level. At the provincial level, there are a lot of *perdas* that were passed by provincial parliament. However, since the scope of the study is limited to district level, we will say nothing about *perdas* at the provincial level.

To give the idea of various *perdas* related to overseas employment at the district 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 *perdas* in all districts is made available. Hence, the best estimate is to find the data from various online sources.²

We are interested in finding out whether districts with a bigger size of migrants also issue higher number of *perda* related to overseas employment. Size of migrants in each district is aggregated from the 2008 village potential census.³ For simplification, migrant size is divided into five quintiles.

1.3.3. Case study

A case study is conducted in four districts to examine the policy process behind the existence or non existence of *perda* focusing on migrant protection. The migrant source districts are chosen purposively to include two districts with and two districts without protection regulation. East Java and West Nusa Tenggara are picked out as both are provinces where most migrants originate. Blitar and West Lombok are districts with protection *perda*. Their neighboring districts, Ponorogo and Central Lombok are districts without protection *perda*, although both had the draft version of the protection *perda*. Indeed, all four districts – through advocating NGOs – received technical assistance from donor agencies to formulate protection *perda*.

However, implementation problems of protection *perda* in Blitar and West Lombok districts have inhibited the observation of the impact of *perda* on the protection of migrant workers. Dispute between stakeholders in Blitar District, in particular the advocating NGOs and the local government hampered the process of recording Perda No. 16/2008 in the District Legislation Book. A solution to the difference of opinion resulted in *perda* being revised. Meanwhile *perda* No. 5/2008 of West Lombok District had been slowly implemented owing to general election as well as district executive and legislative election. At the time the field work took place, the Protection Commission was inaugurated by the District Head. For this reason, the field work only observed the local reform on paper rather than in practice.

The initial part of the field work involves 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 are explored. Meanwhile, migrant workers statistics from BPS (Badan Pusat Statistik, Central Agency of Statistics) at the district level and from BP3TKI are also collected for further reference.

At the village level, prospective migrants, ex migrants or migrant families are invited to discuss the emigration issues they encounter. This village level Focus Group Discussions (FGDs) was segregated by gender: one for men and one for women. Additionally, in depth interviews were held with village and sub-district officials, who are in charge of administration requirement for prospective migrants. Interviews were also carried out with private recruitment agencies, and migrants experiencing abuse - either prior to departure, during work, or after arrival.

The initial findings from stakeholder consultation and village level FGDs are then presented in FGDs at the district level. At this stage, local government officials, private recruitment agencies, and migrant worker associations are again invited to give their comments and

² (i) <http://gudanghukumindonesia.blogspot.com/>; (ii) <http://www.kppod.org/>; (iii) <http://www.legalitas.org/>.

³ 2008 Village Potential Census involves not less than 75,000 villages

feedback. While this serves as triangulation to confirm initial findings, the research team will make use of their presence to by presenting the hopes and aspirations of the migrant workers and to initiate further policy engagement in protecting migrant workers. Thus, in total, the field work in four districts involved 12 FGDs (per district: two with migrant workers, one with stakeholders at the district level).

1.4. Limitations of the Research

The research has been limited with access to the copy of *perda*. Hence, the only proxy is the reported list of *perdas* available online. The list includes the number of *perda* and the title. We then googled the copy of *perda* based on its number and title. Some are available, but mostly not (see annex 1). This means the list of 127 *perdas* makes up only some parts of the some other hundreds out there which we cannot capture. Our findings, then, only indicate the characteristic of reported *perdas*. Furthermore, the current status of these online-available *perdas* is not regularly updated. However, since our purpose is only to map and classify all ever made *perdas* related to overseas employment, the current status becomes of less importance.

Furthermore, the research did not observe the implementation of *perda* since it was conducted not long after the legislation of *perda*. Also, in West Lombok, the implementation phase took place very slowly. Hence, it only focused on its textual analysis in the case of Blitar and West Lombok Districts. This exercise was considered to be important as the rationale behind passing protection *perda* as well as the lessons learned for other migrant-source districts wishing to prepare the protection *perda*.

CHAPTER 2 NATIONAL REGULATORY FRAMEWORK

This chapter basically reviews UUPPTKI. Focus is particularly given on its delineation problem which is one of the weaknesses of UU PPTKI. It starts with dualism and a power struggle between Kemnakertrans (Kementrian Tenaga Kerja dan Transmigrasi, Ministry of Manpower and Transmigration) and BNP2TKI at the central level. Then, the problem of intergovernmental relationships is also overviewed. UU PPTKI also fails to attribute clear authorities of governments in each level. Since this study's primary concerns lies with the district government, the discussion will cover only problems at the district level. Further subchapters are about the missing elements of UU PPTKI which trigger policy gaps that need to be potentially filled by the district government.

2. 1. DUAL AUTHORITIES AT THE CENTRAL LEVEL

Following twice deportations of some hundred thousands of migrant workers from Malaysia in 2002 and 2004 which involved casualties and injuries that spurred public outcry, the Indonesian government was under pressure to establish UU PPTKI. In September 2004 the law was finally passed, rather in rush (Perempuan, 2006). For almost two years, the placement and protection of migrant workers still referred to the Ministerial Stipulation No. KEP.104A/MEN/2002. The first comprehensive implementing regulation under UU PPTKI was issued only in 2006. This is Permenakertrans No. PER.19/MEN/V/2006.

In 2007, after the establishment of BNP2TKI, centralization vs. decentralization management of emigration became a heated public discourse. Against the centralistic characteristic of BNP2TKI, the Minister of Manpower and Transmigration insisted that overseas employment should be one of the decentralized issues (Ecosocrights, 2009). Quoting article 9 of PP (Peraturan Pemerintah, Government Regulation), he claimed that employment is an obligatory matter for provincial and district governments. Meanwhile, he also referred to article 95 of UU PPTKI, which specifies the responsibility of BNP2TKI only to the placement and protection arranged by the government, which constitutes only about 30,000 people or not more than 10% of the total migration stock of 4.3 million (Sudrajat, 2009).⁴ If so, the procedures regulating the privately arranged emigration should be decentralized.

Dualism of authority at the national level is unavoidable, particularly after the minister issued Permenakertrans (Peraturan Menteri Tenaga Kerja dan Transmigrasi, Manpower and Transmigration Ministerial Regulation) No. PER.22/MEN/XII/2008 concerning the Implementation of PPTKI (Penempatan dan Perlindungan Tenaga Kerja Indonesia, Placement and Protection of Indonesian Migrant Workers).⁵ This ministerial regulation took back the authority that it once had given to BNP2TKI in Ministerial Regulation No. PER.18/MEN/IX/2007 concerning the Implementation of PPTKI and instead gave it to the provincial and district governments.

⁴ According to UU PPTKI, there are three types of overseas employment: G to G, G to P, and P to P. About 90% of Indonesians take the P to P type in which chapter 1 says that PPTKIS is the party in charge of placement and protection of the migrant workers.

⁵ Permenakertrans No. PER.18/MEN/IX/2007 transfers the operational management of PPTKI from Kemnakertrans to BNP2TKI. Permenakertrans No. PER.22/MEN/XII/2008 basically annulled Ministerial Regulation No. PER.18/MEN/IX/2007. The minister took back the BNP2TKI's authority and gave it to the subnational levels.

The Head of BNP2TKI was strongly against the establishment of Permenakertrans No. PER.22/MEN/XII/2008, which he viewed as an effort to dwindle his authority (Sudrajat, 2009). He brought this Permenakertrans to the Supreme Court for judicial review. Tension between the two national institutions increased. Prior to the decision of the Supreme Court, Menakertrans issued Permenakertrans No. PER.05/MEN/III/2009 concerning Preparatory Implementation of Prospective Migrant Workers in which the minister reconfirmed that Menakertrans as being responsible for job training, PAP, SISKOTKLN (Sistem Komputerisasi Tenaga Kerja Luar Negeri, computerized data system of overseas employment), KTKLN (Kartu Tanda Kerja Luar Negeri, overseas worker ID card).

Further, in the Supreme Court's decision No. 05 P/HUM/2009, it invalidated Permenakertrans No. PER.22/MEN/XII/2008.⁶ In response to this, a circulated letter No. SE.203/MEN/VI/2009 was issued by the minister to all governors and district heads. The letter emphasized that the Supreme Court gave 90 days before its decision came into force. Within 90 days, all governor, district heads, and city mayors should still refer to Permenakertrans No. PER.22/MEN/XII/2008.⁷

Approaching the end of 90 days after the Supreme Court decision, the minister finally issued Permenakertrans No. PER.15/MEN/VIII/2009, in which he cancelled Permenakertrans No. PER.22/MEN/XII/2008. One would expect that Permenakertrans No. PER.15/MEN/VIII/2009 would eventually end the battle between Kemnakertrans and BNP2TKI. In reality, confrontation continued with the minister issuing three more regulations whose contents were alike the annulled Permenakertrans. The minister issued (i) Permenakertrans No. PER.16/MEN/VIII/2009 concerning Procedure of Issuing SIP (Surat Izin Penempatan, mobilization permit); (ii) Permenakertrans No. PER.17/MEN/VIII/2009 concerning Implementation of PAP (Pelatihan Akhir Pemberangkatan, pre-departure training); (ii) Permenakertrans No. PER.18/MEN/VIII/2009 concerning Procedure of Obtaining KTKLN.

Only in October 2010, the power struggle was officially terminated with the passing of Permenakertrans No. PER.14/MEN/X/2010 concerning Implementation of PPTKI. In this regulation, the new minister of Kemnakertrans called off Permenakertrans No. PER.16/MEN/VIII/2009 Permenakertrans No. PER.17/MEN/VIII/2009, Permenakertrans No. PER.18/MEN/VIII/2009. Instead, the regulation gave back the operational authority of placement and protection of migrant workers to BNP2TKI.⁸

Because of dualism of authority in overseas employment governance, the implementing legislations on placement and protection of migrant workers went through an eight-time revision, namely:

- Kepmenakertrans No. KEP.104A/MEN/2002⁹
- Permenakertrans No. PER.19/MEN/V/2006
- Permenakertrans No. PER.18/MEN/IX/2007

⁶ The decision of the Supreme Court was considered by some informants to be surprisingly fast, less than one year after filing the judicial review

⁷ Duration of 90 days is counted from 18 May 2009, the day on which the minister received the decision of the Supreme Court.

⁸ The implementation of this new regulation is yet to observe.

⁹ Kepmenakertrans (Keputusan Menteri Tenaga Kerja dan Transmigrasi, Stipulation Letter of Minister of Manpower and Transmigration)

- Permenakertrans No. PER.22/MEN/XII/2008
- Permenakertrans No. PER.05/MEN/III/2009
- Ministerial Circulation Letter No. SE.203/MEN/VI/2009
- Permenakertrans No. PER.15/MEN/VIII/2009
- Permenakertrans No. PER.14/MEN/X/2010

The story behind this conflict is clear: the Emigration industry is profitable and involves rent seeking activities; among others are SIP, PAP, and KTKLN. Therefore, the issue of centralization vs. decentralization is more complex than simply a political and administration matters. However, one should note that emigration is not only about placement but also about protection. Power struggles and dualism of emigration governance – whether it should be centralized or decentralized – certainly involve placement, but unfortunately not protection.

2.2. MISSING ELEMENTS OF UU PPTKI

Principle criticism against UU PPTKI deals with its bias towards placement rather than protection. Out of 109 articles of the law, only eight articles (article 77 to article 84) deal with protection. The law reflects that emigration is regarded by the government as simply a business matter, and, hence, the placement as many as possible is what is desired. Lack of protection within the law is obvious for the following reasons.

UU PPTKI shows inconstancy in addressing migrants' rights. Article 7 (a) and 8 (b) stipulates that the State guarantees the rights' fulfilment, including the rights for correct and reliable information about overseas labour market and placement procedure. But then it simply hands over the information provision to the private recruitment agencies in article 34 (3).

The private recruitment agencies are certainly not interested in passing on the right-based information and other important facts to the migrants which are against their vested interest. For example, recruitment agencies do not inform the workers what their rights in industrial relation are, fearing that doing so will spoil their agency's reputation of supplying obedient workers. Furthermore the agencies do not reveal the real and honest information about working conditions to workers, fearing that doing so would cause prospective workers to lose their interest. The issues involve (i) who guarantees that these profit-oriented entities convey true information to the migrant workers; and (ii) what would be the sanction if they do not.

Moreover, article 7(e) of the law maintains that the state provides protection to the migrant workers prior, during, and post employment period. Article 82 stipulates that the private recruitment agencies are responsible for giving protection to the migrant workers according to the placement contract. But again, how to ensure that the agencies are doing what the law mandates and what are the sanction if they are not?

Furthermore, the law is unclear about protection against extortion and exploitation. Article 39 instructs the private recruitment agencies to bear all costs except stated otherwise. However, article 76 (1) and (2) of UU PPTKI states that private recruitment agencies can charge the cost of (i) processing of identity documents; (ii) health and psychological tests; (iii) job training and professional certificate; (iv) "others" as further regulated by ministered. The term "others" was 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 transparent. But how to assure that these commercial organizations are not overcharging the workers? The straightforward answer is effective supervision and proper sanction by the government.

Above all, supervision is crucial for legal enforcement. This, however, is particularly inconsistent and weak in the law. On the one hand, article 92 (1) rules that government agencies, including those at the provincial and district levels are responsible for supervision. On the other hand, article 95 (2) says that supervision is the task of BNP2TKI. If two different institutions are given the same task, one can predict the outcome that neither will do it.

Meanwhile the delineation of authority between BNP2TKI and BP3TKI on the one hand and the sub-national governments (either provincial or district) on the other hand remains unclear. Lack of clarity in this particular aspect is not even addressed in any of the Permenakertrans and can potentially create confusion and inefficiency of operation (see box 1).

Box 1. One Stop Service (OSS) in West Nusa Tenggara: Central or Provincial's Authority?

WNT Province was the first province to have the OSS for migrant workers. Although the idea had been brought to the fore since 2000, the concept was officially adopted in 2008 when the key stakeholders – the Governor of WNT, the Head of BNP2TKI, and the Head of Provincial Agency for Manpower and Transmigration. On 15 December 2008, the Governor of WNT passed Governor Regulation No. 32/2008 concerning the OSS of Placement and Protection of WNT Migrant Workers to officially mark the establishment of the OSS

Considering the complexity of bureaucracy, the main mandate of the OSS bears is to integrate and – hence streamline – the documentation services at the provincial level. With the existence of OSS, a migrant worker is supposed to get various services in one place. For example, they can get information service, receive KTKLN, pay his/her compulsory USD15 assistance and development fee, pay the insurance premium, get tax-free letter, attend pre-departure training, and receive the work contract.¹⁰ Hence, the OSS accommodates a number of agencies, namely BP3TKI, Provincial Agency for Manpower and Transmigration, Tax Office, and Insurance.

While the existence of OSS reflects a solid partnership between central and provincial governments, it has so far been an ad hoc institution with ambiguous ownership.¹¹ Changing its status to a permanent one will require institutional clarity. If OSS is to become a provincial technical implementation unit, it should be under the Provincial Agency for Manpower and Transmigration. If it is to become an independent Provincial Agency, it should

¹⁰ Before 2011, each citizen leaving the country has to bear the tax of Rp1,500,000, unless owning a Tax Identification Number (Nomor Pokok Wajib Pajak, NPWP). In early 2011, this tax was officially cancelled. Information of cancellation has not reached some PPTKIS interviewed.

¹¹ Permenakertrans No. PER.14/MEN/X/2010 does say that OSS is coordinated by the governor as the representative of the central government. The governor would coordinate BP3TKI, Provincial and District Disnakertrans, and other relevant institutions. This Permenakertrans, however, does not address the ownership question

have its own staff, capable of running the daily operation. Indeed, at present, the OSS resides in one of provincial government properties while its office is run by 13 officers of BP3TKI and two officers of Provincial Agency for Manpower and Transmigration. Since BP3TKI staff belong to the central government, the possibility of transforming OSS as a Provincial Agency will be less likely.

Source: In-depth interview with M.S. (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), M.A. (chairman of association of PPTKIS in West Nusa Tenggara, about 50 years old, 25 October 2010).

2.3. POLICY GAP AND LOCAL GOVERNMENT INITIATIVES

Even if UU PPTKI is considered centralistic, to a certain extent it acknowledges the roles of district government. Those roles and responsibilities are the following:

- Recruitment process: to have the prospective workers registered (article 36)
- Placement contract between prospective workers and PPTKIS: (i) to be informed of the existence of placement contract (article 38); (ii) and get copy of the placement contract (article 54)
- Passport recommendation: to give recommendation for the prospective workers in arranging their passports (illumination of article 51 (f))
- Mediation in dispute: to assist in mediating between dispute parties (article 85)
- Supervision: (i) to supervise the placement and protection of migrant workers (article 92); (ii) to submit the supervision report to the minister (article 93)
- Investigation in violation: to act as investigator in case of violation (article 101)

NGOs, such Komnas Perempuan, Ecosoc Rights, UNIFEM, Migrant Care, maintain their support for decentralization in emigration governance.¹² For those NGOs, UU PD is sufficient to back up the idea of transferring power, finance, and administration to the district governments. Komnas Perempuan for example has explicitly specified that gender and human right issues are missing in UU PPTKI and therefore advocated the formulation of *perda* with the perspectives of gender and human rights (Komnas Perempuan, 2006). Ecosoc Rights (2008) also assisted Banyumas, Jember, and Tulang Bawang districts in formulating their *perdas* considering that protection is almost absent in UU PPTKI. Since employment is an obligatory matter for local governments (article 14 (1) of the law), local government must not disregard the protection of overseas workers. Both domestic and overseas workers are citizens and are no different in terms of rights. Local governments are obliged to give them service and protection while they are still in local jurisdiction.

It is definitely not recommended to delay the protection of the migrants until the national policy becomes perfect. Instead, local government initiatives have a great potential to fill in the existing policy gaps in terms of protection, particularly the pre-placement protection. Even in a situation where policy gaps disappear, protection *perda* is still needed for the following reasons. First, the absence of *permenakertrans* on local government's roles does

¹² Information was obtained from interview with A.H. (female, about 30 years old) on 2 October, 2009; interview with S.W.E. (female, 35 years old) on 5 October, 2009; interview with S.P. (female 45 years old) on 23 October, 2009; interview with Y. C. (female, about 45 years old) on 1 April, 2010, D.F. (female, about 35 years old), 19 April, 2010.

hamper law execution. In this context, *perda* could elaborate and specify the local government's roles in line with the mandate of UU PPTKI.

Second, *perda* could state specific needs of the districts which could not be accommodated in UU PPTKI. Issues like main destination and cost structure is locally specific and, hence, *perda* could indicate this. For example, the majority of migrant workers of West and Central Lombok work in Malaysia and the Middle East, while their colleague of Blitar and Ponorogo head for East Asia. *Perda* in these districts could specifically stipulate cost structure in the destination countries to which their migrants work.

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

Fourth, *perda* clearly stipulate sanctions against violations which take place at the district level. *Perda* could act as a form of shock therapy to any party that usually does the extortion, abuse, and detention prior to the departure. Strong law enforcement afterward would certainly improve migrants' protection.

Finally, the dilemma between having protection *perda* or not having protection *perda* lies in the fact that empirically speaking, the implementation of *perda* and law enforcement have been far from sufficient. Thus, the question is: should we establish normative law or should we cling to the empirics and abandon the idea of having *perda*? Since we already have four other reasons mentioned earlier, we should bring the establishment of *perda* to the fore. The lack of implementation is not a problem that can be solved overnight. It will be solved slowly but surely. However, the ultimate desire for establishing protection *perda* is that, in the long run, it could serve as the guide for a civil society behavior and attitude that respects migrant workers. We, therefore, should not leave the idea of passing protection *perda* until lack of implementation is solved. After all, if Indonesians do not respect their fellow citizens working abroad, how would people in destination countries do so?

CHAPTER 3 TYPOLOGY AND MAPPING ANALYSIS OF *PERDAS* RELATED TO OVERSEAS EMPLOYMENT

To explain the general regulatory framework at the district level, this chapter particularly analyses the *perdas* related to overseas employment. First, it discusses the general fast growing phenomenon of taxes and user charges *perdas* after the onset of decentralization in 2001. While most of the *perdas* related to business and investment are considered bad for public service delivery as they impose fees, *perdas* 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 districts according to their *perda* types are overlaid with the districts according to their migrant size. Finally, findings from the mapping analysis reveal common regulations related to overseas employment.

3.1. Regional Autonomy and Taxes and User Charges *Perdas*

The decentralization framework is centered around political, administrative, and fiscal matters which are explained in two very important laws: Law No. 32/2004 concerning PD and Law No. 33/2004 concerning Fiscal Balance. In political and administrative matters, local governments have to assume responsibility in providing 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 PDRD (Pajak Daerah dan Retribusi Daerah, Local Taxes and User Charges). UU PDRD allowed for a flexibility of local governments in generating their local revenue. By passing *perda*, local governments can impose taxes and user charges even without the approval of the central government.

However, having the objectives of maximizing the revenue, rather than optimizing it, every district government tends to make best use of UU PDRD by formulating taxes and user charges *perdas* at the cost of long term investment. Coupled with the euphoria of autonomy, the open-list nature of UU PDRD, apparently, has given rooms to the local governments to exercise their power. Moreover, the freedom to issue the *perdas* to increase local revenue has been misunderstood by the 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 common economic policy have been so far almost out of question. These will eventually obstruct local investment, create high cost economy, reduce Indonesia's competitiveness, and weaken the nation's integrity (Soesastro, 2001). At the same time, the span of control of the central government against the so-called problematic *perdas* is notoriously weak, particularly in the context of 509 districts.¹³

The era of 2000s saw a booming of problematic *perdas* and was considered one of the side effects of decentralization on business enabling environment. The phenomenon of problematic *perdas* has been intensively discussed and has become a national concern. Business communities have heavily complained, urging the central government to cancel

¹³ Latest data from Directorate General of Fiscal Balance, Ministry of Finance (www.djpk.go.id)

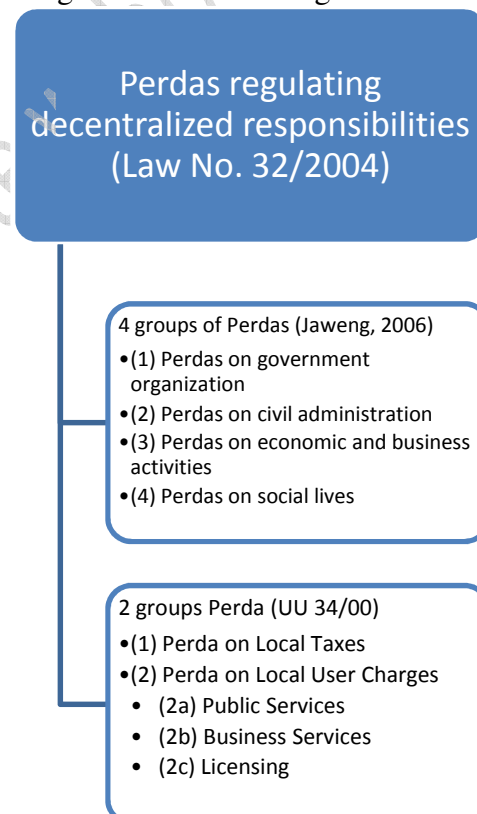
these *perdas*. Indeed, these *perdas* encompass cross sectoral taxes and charges ranging from agriculture, trade, industry, transportation, communication, employment etc. In general, they might appear as *perdas* of excessive business license, *perdas* of goods and services distribution, and *perdas* of general administrative fees (Bachtiar et al., 2009). Many a 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 *perdas* that clearly distort the investment climate. The speed of cancellation cannot keep up with the speed of issuing new *perdas*. After many years of pros and cons, in late 2009, the parliament finally passed the revision of Law No. 34/2000 which is Law No. 28/2009 concerning PDRD. Different than Law No. 34/2000, Law No. 28/2009 employs a close list system where only the listed taxes and user charges are allowed to be imposed locally. Moreover, district governments should seek assistance and approval from the provincial government before issuing new *perdas*. Two years have been given to district governments to terminate the problematic *perdas* which are not within the list of the new law.

3.2. Typology of *Perdas* related to Overseas Employment

There are multiple ways of grouping *perdas* 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 *perdas* (figure 1). He echoed that except for *perdas* related to government organization, there are three other categories (in particular economic activities) most likely have fee implication, through tax, user charge, voluntary contribution, or at a very least penalty for violation.

Figure 1 General Categories of *Perdas*

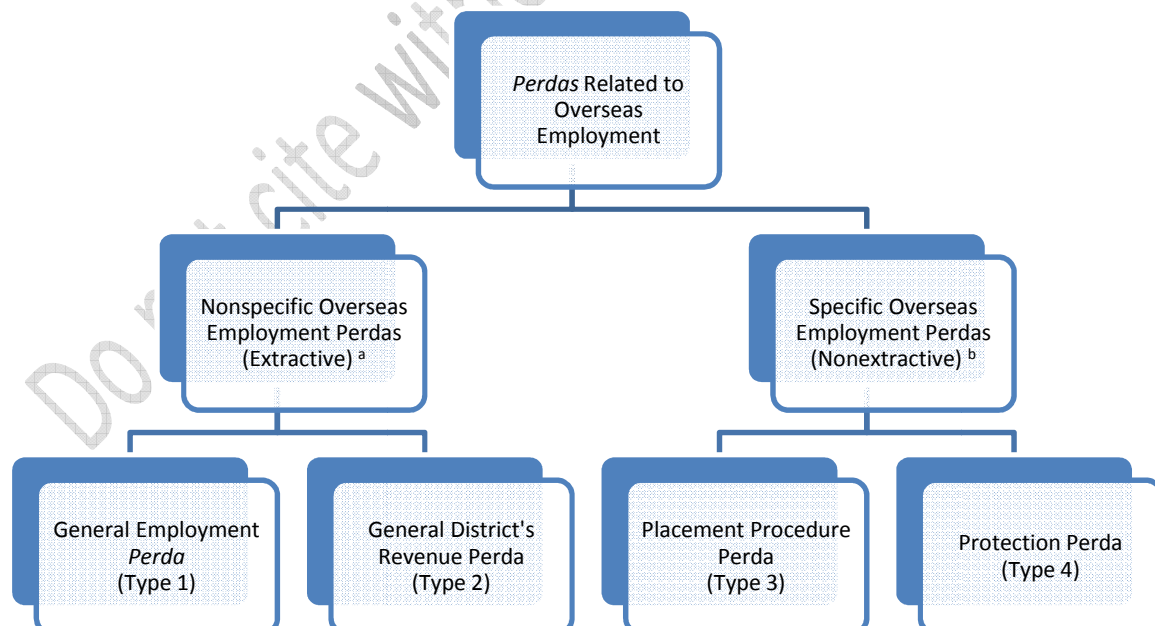


Being one of the decentralized responsibilities, employment is also the area where district governments can possibly extract levies. Although this violates the law, many local governments insist on collecting them. Particularly for migrants-source districts, the tendency to levy is very high.

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 private recruitment agency. In running its operation, a private recruitment agency must get approval from local government. The approval appears as recommendation letter, such as (i) recommendation business license; (ii) recommendation to recruit workers; (iii) recommendation to establish training center; and (iv) recommendation to establish dormitory. Some districts might also impose placement fee to private recruitment agency. One should know that charging private recruitment agency means charging the migrant workers. In the absence of accountability, the first 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 overseas employment *perdas*, which are established by migrant-source districts. These are *perdas* without the spirit of extracting levy. On this ground, we offer the typology with two general types: nonspecific (extractive) and specific (nonextractive) *perdas*. In specific, *perdas* related to overseas employment can be grouped into four types of *perdas* (figure 2).

Figure 2 Typology of *Perdas* Related to Overseas Employment



Source: Author's framework

^a Title of *perda* does not specifically mention overseas employment

^b Title of *perda* specifically mentions overseas employment

Type 1 *perda* focuses on general employment charges, including overseas employment. These charges are paid by either the workers or by the companies. Some districts differentiate *perda* that charges the workers (*perda* of employment service charges) from *perda* that charges the companies (*perda* of licensing charges). However, a majority of districts just combine the two in one *perda*. Type 1 *perda* are mostly issued by migrant-source districts. Possible titles of type 1 *perda* are employment *perda*, employment services *perda*, employment charges *perda* (see annex 1).

Type 2 *perda* is about general district revenues, including those from overseas employment. It is formulated more generally than type 1. Charges in type 2 are paid by citizens and various business communities, migrant workers and private recruitment agencies. Possible titles of type 2 *perda* are *perda* of third party contributions, *perda* of administration fees, *perda* of legalization fee, and *perda* of all other revenues (see annex 1).

Type 3 *perda* deals with placement procedure of overseas employment. It does not rule any financial consequences, neither to the migrant workers nor to the private recruitment agencies. Although in some cases, the title explicitly mentions protection of migrant workers, the content regulates the placement procedure heavily and therefore this type is categorized separately from type 4. Type 3 *perda* tends to only duplicate the substance of UU PPTKI and, hence, it does not fill the policy gap. Indeed, the presence of type 3 *perda* is rather unnecessary because placement procedures have been regulated nationally.

Type 4 *perda* are concerned with 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.

Perdas type 1 and type 2 intend to secure local revenues. However, since they charge what they should not charge, or they charge more than they should, these *perdas* 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 *perdas* have been cancelled by the Ministry of Home Affairs (MOHA) on the ground that they go against the spirit of local governments welcoming investment.¹⁴

However, efforts for cancellation face enormous difficulties. The standard procedure that these *perdas* go through is via an examination by the Kemenkeu (Kementerian Keuangan, Ministry of Finance) from which the problematic *perdas* are submitted for further re-examination by Kemdagri (Kementerian Dalam Negeri, Ministry of Home Affairs). Only after re-examination can Kemdagri finally issue a cancellation letter.

This process has been notoriously long and winding due to at least three major factors. First, obtaining copies of *perda* is not easy since the districts do not send them to Jakarta. In fact, districts tend to hide them.¹⁵ In the absence of their copy, the examination of *perdas* is impossible. Second, if total districts amount to 497 and suppose one district produces one *perda* per month, both Kemenkeu and Kemdagri have to be ready to examine not less than

¹⁴ Much hope is put in the implementation of close list system under Law No. 28/2009. Since the law explicitly stipulates the allowed *perdas*, the local governments could not therefore issue any *perdas* outside the allowed ones.

¹⁵ This was the experience of the research team in Ponorogo District

497 investment-related *perdas* per month: a task whose magnitude is next to impossible.¹⁶ Third, the financial consequence of investment-related policy might not appear directly in *perda* but in lower legal products, such as district head decree which is very difficult to detect from the national level.

Aside from legal scrutiny of these *perdas*, there is a persistent problem of implementation. Even if eventually Mendagri issues letter ordering cancellation of *perda*, the order is not necessarily obeyed by the local authorities. Otherwise, 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 Regulation of District Head or Stipulation of District Head. The span of control of 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 is still pervasive. The spirit of giving protection to the migrant workers is therefore severely weakened by the enthusiasm of the local government to levy against the placement of overseas employment.

The similarity of *perda* type 3 and 4 is that both do not discuss anything about financial consequence that the migrant workers or the PPTKIS have to bear. The difference, however, between type 3 and 4 is that the first focuses more on placement procedure, while the latter on protection of migrant workers. Type 4 concentrates on what have not been ruled in the national law. Protection *perda* mandates the establishment of Protection Commission. This is a specialized body expediting the handling of abuse and extortion cases, mediating between various stakeholders, and issuing warning when violations occur.

¹⁶ With Law No. 28/2009, this task is shifted to the provincial level, where district government should seek consultancy with provincial officials prior to the passing of the *perdas*.

3.3. Mapping Analysis

Table 1. Districts with Perdas Related to Overseas Employment: Indicative Numbers and Migrant Size ¹⁷

	Q1	Q2	Q3	Q4	Q5
# District = 418 ^a	84	84	84	84	82
# Migrant workers in each district issuing <i>perda</i> ^b	0-22	36-174	232-802	945-3,534	4,202-57,067
# <i>Perdas</i> related to overseas employment = 127	16	23	20	28	40
# Type 1 <i>perda</i>	14	22	19	25	23
# Type 2 <i>perda</i>	2	1	1	3	11
# Type 3 <i>perda</i>	0	0	0	0	3
# Type 4 <i>perda</i>	0	0	0	0	3
# District issuing <i>perdas</i> related to overseas employment = 115	14	21	20	25 ^c	35 ^c
# District issuing Type 1 <i>perda</i>	12	20	19	23	23
# District issuing Type 2 <i>perda</i>	2	1	1	3	11
# District issuing Type 3 <i>perda</i>	0	0	0	0	3
# District issuing Type 4 <i>perda</i>	0	0	0	0	3

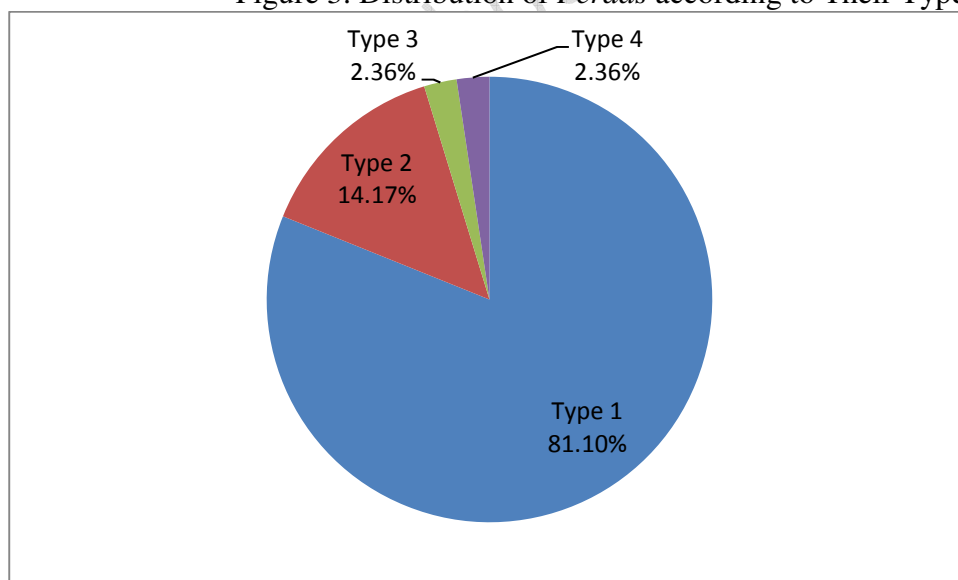
Source: Author's calculation based on Village Potential Census and reported *perdas* which are available in the website of (i) KPPOD.org; (ii) gudanghukum.org; (iii) legalitas.or.id.

^a Number of districts is according to Census of Village Potential (2005)

^b Data of migrant size in each district is taken from Census of Village Potential (2005)

^c Some districts issue more than one *perda* of the same type, and some issue more than one *perda* of different types (see table 2)

Figure 3. Distribution of *Perdas* according to Their Types



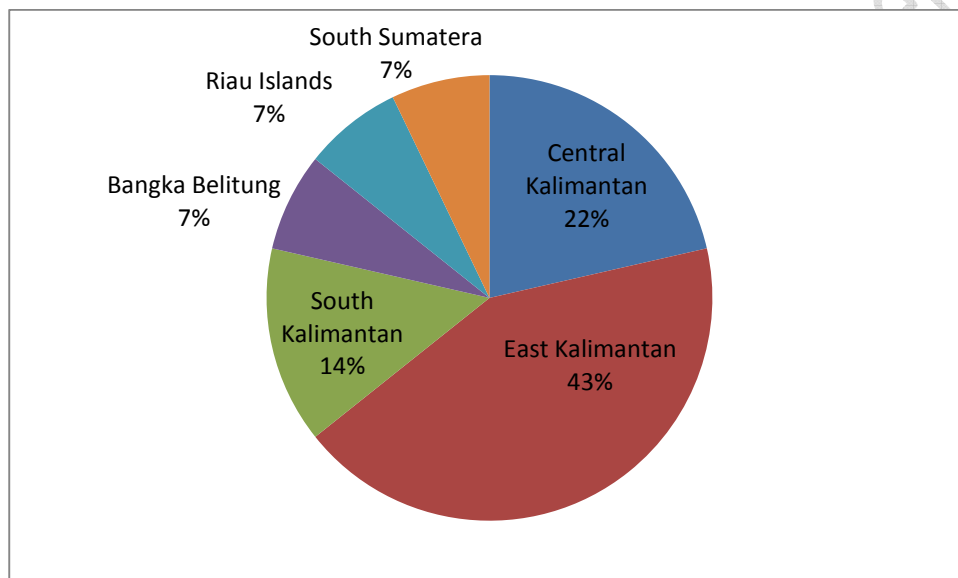
n = number of *perda* = 127

¹⁷ See annex 1 for more detail information about every *perda*; see annex 2 for the distribution of *perdas* based on their legislated years; and annex 3 for the distribution of *perdas* based on their corresponding provinces.

What can we learn from this table? First, in general there exists a correlation between districts with *perdas* related to overseas employment and districts with migrant size. In Q1 only 14 out of 84 district issuing *perda* while in Q5 36 out of 82 districts issued *perdas* related to overseas employment. Hence, this implies the more migrants a district has the more likely it produces *perda* related to overseas employment. In total, compared to the rest of Qs, the Q5 districts which are the migrant-source districts produced more *perdas* in terms of quantity as well as variation.

Second, surprisingly, many of districts which have few overseas workers (Q1 to Q3) pass type 1 and type 2 *perdas*. The extreme case is that *perda* related to overseas employment is issued even by Q1 districts without any overseas employment migrant, such as Berau Districts of East Kalimantan and Murung Raya Districts of Central Kalimantan. These two districts are located closed to the border with Malaysia and Brunei and have become migrants' transit areas.

Figure 4. Distribution of Corresponding Provinces of Q1 Districts



Note: n = number of district = 14

The corresponding provinces of Q1 districts are well known to be the transit areas where people from all over Indonesia cross over borders (figure 4). As transit areas, the prospective migrants and the private recruitment agencies would require various administrative services from the local governments. Else, irregular/undocumented/illegal migration activity involves making fake identity documents in these areas. Considering this potential, the district governments issue *perdas* to impose charges to the migrants and agencies. Porous borders of Indonesia to neighboring countries such as Malaysia, Singapore, Brunei explain why districts with few migrant workers issue *perdas* related to overseas employment.

Another explanation comes from domestic migration since type 1 and type 2 *perdas* are also applicable to districts with domestic migrant workers. Districts in Kalimantan where mining companies are located, such as Bontang and East Kutai, are districts attracting workers from other parts of Indonesia, particularly from Java. Local governments in these districts would also be eager to levy domestic migrants. Because of these features, type 1 and type 2 *perdas* tend to spread in districts regardless of number of overseas migrants.

Extractive *perdas* which charge the workers for administrative services are against the Presidential Regulation No. 36/2002 concerning Ratification of ILO Convention No. 88 concerning the Organization of the Employment Service. In general, article 6 (b) of the law instructs government at all levels to speed up workers mobility domestically and internationally. More detail, article 38 (1) of Law No. 13/2003 concerning Manpower states that government institutions as well as private recruitment agencies are not to charge any fees to workers directly or indirectly. Collecting levy from workers also violates against UU PDRD. Local government is responsible for providing regular services to the workers free of charge as the reflection of its accountability to the citizens.

Table 2. Districts with Multiple *Perdas* related to Overseas Employment

District/Municipality	Q	# migrants	No. /Year	Title of Perda	Type
Bontang Municipality	1	10	7/2002	Employment Permit Fee	1
			6/2002	Employment Service Fee	1
East Kutai District	1	14	20/2002	Employment Service Fee	1
			18/2002	Skill Development Fund for Migrants	1
Bolaang Mangondow District	2	72	21/2001	Employment Permit Fee	1
			22/2002	Employment Service Fee	1
Bengkulu Municipality	2	124	5/2003	Employment Permit Fee	1
			6/2003	Employment Service Fee	1
Donggala District	4	1139	11/2002	Business License of Private Recruitment Agency	1
			12/2002	Employment Recruitment Fee	1
Sukoharjo District	4	1021	30/2001	Employment Permit Fee	1
			31/2001	Employment Service Fee	1
Dompu District	4	2802	16/2001	Employment Service Fee	1
			20/2001	Administration Fee	2
Bima District	5	5853	158/2006*)	Employment Service	1
			25/2001	Administration Fee	2
Cianjur District	5	49126	8/2001	Administration Fee	2
			15/2002	Protection of Indonesian Migrant Workers	3
Jember District	5	14469	12/2003	Employment Fee	1
			5/2008	Service, Placement, and Protection of Indonesian Migrant Workers	3
Sumbawa District	5	8304	12/2003	Employment Service Fee	1
			21/2007	Protection and Empowerment of Migrant Workers	4
West Lombok District	5	18237	13/2002	Other Legitimate Local Revenues	2
			5/2008	Protection of Indonesian Migrant Workers	4

Source: author's calculation

*) District Head Stipulation

Third, figure 3 demonstrates that out of 127 *perdas* only 3 *perdas* (2.4%) deal with protection (type 4). A majority: 81.1% and 14.2% fall in type 1 and type 2, respectively. Moreover, only 3 districts (3.7%) out of a total 82 migrant source districts in Q5 have protection *perdas*. Meanwhile 34 districts (41.5%) of Q5 districts are more interested in passing extractive

perdas. Indeed, awareness and willingness of local governments to take initiative to protect their migrants is still far from adequate.

Fourth, the typology we made is not necessarily mutually exclusive. Table 2 highlights that some districts issue more than one *perda*. Some districts, such as Bontang, East Kutai, Bollang Mangondo, Bengkulu, Donggala, and Sukoharjo, legislated two *perdas* of type 1. Meanwhile Dompu, Bima, Jember, Sumbawa, Cianjur, and West Lombok districts established two *perdas* of different types. What is striking is that having the ultimate protection *perda* does not necessarily mean not having extractive *perda*. Apparently, districts that pass protection do not cancel their extractive *perdas*. Sumbawa, and West Lombok are districts with protection *perda* but also with extractive and specialized *perda*. Thus, the districts may protect their migrant workers in some ways but in other ways not do so by at the same time violating the law and taxing the workers, directly or indirectly. The only mutually exclusive case is Blitar District which only passes protection *perda* and none of the extractive types.

CHAPTER 4 POLICY PROCESS OF PROTECTION *PERDA*: TO HAVE OR NOT TO HAVE

This chapter answers the last research questions posed in this study. We compared and contrasted *perda* of Blitar and West Lombok. Then, textual analysis is conducted on the elaboration of local government's role in UU PPTKI and in *perda* of Blitar and West Lombok. Furthermore, the discussion is made on legal drafting process in four research districts. Then, it examines why Blitar and West Lombok were successful while Ponorogo and Central Lombok which apparently have had the draft of protection *perda* failed to actually legislate their protection *perda*. Emphasis is put particularly on the enabling conditions under which the *perdas* could pass the legislation process.

4.1. Protection *Perda* of Blitar and West Lombok

4.1.1. Protection Commission

One distinctive similarity between the *perdas* of Blitar and West Lombok lies in the fact that both stipulate the establishment of Protection Commission at the district level.¹⁸ The formation of this independent body comes from the understanding that Disnakertrans will not be able to solve the problem alone. Meanwhile, problems at the district level require coordination with many institutions, even in other districts or other provinces. Protection Commission is capable of doing this as they are made up of independent professionals with capacity of expediting the solution and mediating the dispute parties in terms of overseas employment.¹⁹ In general, the establishment of Protection Commission at the district level can help solve the abundant cases at the sending districts and villages.

¹⁸ In Blitar, *perda* is still being revised, and, hence, the Protection Commission has not been formed. In West Lombok, the *perda* has come into force and the Protection Commission was inaugurated in October 2010. Yet, its existence has not been known by many stakeholders interviewed. Lack of socialization of the *perda* has been the concern of many NGO activists. For example, H. (female, 50s years old, 21 October 2010); M.S. (male, 50s years old, 24 October 2010), K. (male, 40s years old, 28 October 2010).

¹⁹ Interview with M.S. (male, 50s years old, NGO activist, 24 October 2010)

Table 3 Protection Commission in Blitar and West Lombok Districts

Blitar District (<i>Perda</i> No. 16/2008)	West Lombok District (<i>Perda</i> No. 5/2008)
Establishment (a. 25): Established by parliament, but authorized by District Head; consist of 5 persons (NGO activists, local leaders, professionals); to be selected through fit and proper test by parliament; work for 3 years with once possibility of reelected; to be appointed and terminated with Stipulation Letter of District Head.	Establishment (a. 20): Established by District Head after being selected by a team consisting of 5 persons (academicians, migrant workers association, local government, parliament, NGO); consist of 5 persons; work for 5 years with once possibility of reelected.
Responsibilities (a. 26): To receive complains related to violation of recruitment and placement procedure; to establish regulations, complain mechanism, mediation; to manage "safe shelter"; to campaign for the migrants' rights and obligations; to coordinate with relevant institutions.	Responsibilities (a. 23): To receive complains; to collect and analyse data related to complains; to push Disnakertrans, relevant agencies and PPTKISs to solve the cases of the migrants; to mediate parties in dispute; to coordinate with relevant institutions in other districts, provinces. Authorities (a. 24): To request info regarding cases from PPTKISs, responsible officials; to invite parties for consultation and mediation.
Reporting (a. 26): Annually to the District Head.	Reporting (a. 25): Biannually to the District Head.

Source: *Perda* No. 16/2008 of Blitar District and *Perda* No. 5/2008 of West Lombok District

Note: (...) refers to the number of article

Except some trivialities, Protection Commission in Blitar and West Lombok is similar in terms of establishment and general responsibilities. The only substantial difference lies in the fact that PC in Blitar is established and selected by parliament. This is due to the fact that Protection *Perda* in Blitar is an initiative of the parliament while that of West Lombok is the executive's initiative. We found during our field work that *perda* which came from executive's initiative was much easier to be implemented compared to that from legislative's.

4.1.2. Roles and responsibilities of the local government

Table 4. Comparing Local Government's Roles and Responsibilities in UU PPTKI and in two *perdas*

Roles and responsibilities	UU PPTKI	Blitar District (<i>Perda</i> No. 16/2008)	West Lombok District (<i>Perda</i> No. 5/2008)
Registration	To register the prospective migrant workers (a. 36)	To check validity of ID documents (a. 23)	To check the validity of ID documents (a. 12)
Placement contract	Disnakertrans should be informed of the placement contract (a. 38) PPTKIS should send a copy of it to 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 each worker sign the contract within 6 days after passing the selection process (a. 12)	To check the validity of placement contract (a. 12)
Recommendation for Passport application	To give recommendation letter (elucidation of a. 51)	---	---
Supervision	To supervise the implementation of placement and protection of migrant workers (a. 92)	Disnakertrans is to appoint one or two officers to supervise PPTKIS (a. 22)	Disnakertrans has to supervise the existence and operation of PPTKISs, Disnakertrans has to get biannual report from PPTKISs (a. 19)
Supervision report	Disnakertrans reports the supervision of placement and protection of migrant workers to Minister (a. 93)	---	Disnakertrans is to report to provincial manpower agency and minister of manpower in case of violation by PPTKIS (a. 19)
Mediation in case of dispute	Disnakertrans can help mediate the dispute (a. 85)	Disnakertrans is to be invited to mediate the dispute (a. 32)	Disnakertrans/Protection Commission received cases and must follow it up within 10 x 24 hours (a. 27, 28)
Investigation in case of legal offense	Selected officials at the Disnakertrans is given authority to act as special investigator (a. 101)	Appointed local government officials are given authority to investigate the violation against <i>perda</i> (a. 35)	---
Other roles and responsibilities	---	Safe shelter (a. 26) Protection fund (a. 29)	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 Blitar District; *Perda* No. 5/2008 of West Lombok District

Note: (...) refers to the number of article

Table 4 compares local government's roles and responsibilities as attributed by UU PPTKI and those stipulated by *perdas* in Blitar and West Lombok. Some important lessons arise from this exercise are as follows.

First, it is clear from the table that the stipulations in *perda* strengthen the mandate of UU PPTKI and therefore give more protection to the workers. This is particularly true in the case of registration, placement contract between PPTKIS and migrant workers, and supervision. *Perda* Blitar and West Lombok is stronger in assigning Disnakertrans to check the validity of

ID documents. Similarly, the roles and responsibilities of Disnakertrans is also stronger in the area of placement contract. *Perda* Blitar requires Disnakertrans to be present during the signing of a placement contract, to get a copy of it, and to ensure each worker sign the contract within 6 days after it passes the selection process. Also, the supervisory roles of Disnakertrans is made clearer in *perda* Blitar and West Lombok , compared to UU PPTKI.

Second, a general weakness in the establishment of a law is that the implementing legislations come much later.²⁰ In the case of UU PPTKI which was issued in 2004, the Ministerial Regulation No. PER.19/MEN/V/2006 was only delivered two years afterwards. There was a two year vacuum where the Ministerial Decision No. 104A/MEN/2002 was still used. Furthermore, the socialization of implementing legislations is also problematic. Not uncommon, a time lag exists between the establishment of a ministerial regulation or decision and the local government being informed of it.²¹ Thus, the establishment of implementing legislation is already slow, and the socialization of it is even slower. Because of this loophole, *perda* with the intention of giving protection to the migrant worker has the potential to fill this policy gap. One extreme case is the local government's roles and responsibilities in terms of supervision report. UU PPTKI promised to issue a mechanism of supervision report (a. 93), but it failed to satisfy because only after seven years it was passed. In this instance, *perda* West Lombok managed to stipulate it, although in a basic way.

Third, even if they exist, the implementing legislations might not be ~~made~~ sufficiently specific. In many cases, they simply copy and paste what is written in the law (table 5). In other words, the implementing legislations fail to deliver the details as well. Except for Ministerial Regulation PER.14/MEN/X/2010 that explicitly exempt the worker from any charge, *perda* of Blitar and West Lombok offer even more detail in specifying local government's roles and responsibilities.

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

²⁰ Most of the time, law only stipulate normative terms and, hence, they require implementing legislations – such as Ministerial Regulation, Ministerial Decision, etc., which further become the technical guidance for implementation. But the problem of slow establishment of implementing legislations happens to all laws, not particular to UU PPTKI

²¹ When the research team visited the Disnakertrans Ponorogo in June 2010 and asked what kind of regulation was used in placement and protection, the officer replied Kepmenakertrans No. KEP.104A/MEN/2002

Table 5. Specific local government's roles and responsibilities on which UU PPTKI promised to issue implementing legislation

UU PPTKI	Implementing Legislation		
	Ministerial Regulation PER.19/MEN/V/2006	Ministerial Regulation PER.18/MEN/IX/2007	Ministerial Regulation PER.14/MEN/X/2010
Registration (a. 36): (1) Job seekers wishing to work overseas have to register themselves in relevant government agency at the district level (a. 36(1)) (2) Registration as mentioned above is done according to Ministerial Regulation	Both PPTKIS' staff and Disnakertrans' staff disseminate information to prospective migrant workers who have registered themselves in Disnakertrans (a. 8)	Both PPTKIS' staff and Disnakertrans' staff disseminate information to prospective migrant workers who have registered themselves in Disnakertrans (a. 9)	Job seekers wishing to work overseas have to register themselves in Dinas at the district level without being charged a fee (a. 8)
Supervision (a. 92): (1) Supervision against the implementation of placement and protection of migrant workers is done by government agency in charge of employment at the central, provincial, and district levels (2) Implementation of supervision mentioned above will be further stipulated by Government Regulation.	---	Supervision against the implementation of placement and protection is carried out by employment supervisor of government agency in charge of employment at the central, provincial, and district levels (a. 58)	Supervision against the implementation of placement and protection is carried out by employment supervisor of government agency in charge of employment at the central, provincial, and district levels (a. 61)
Supervision report (a. 93): (1) Government agency in charge of employment at the central, provincial, and district levels must report the implementation of supervision at their jurisdiction to the Minister (2) Mechanism of reporting as mentioned above will further stipulated in Ministerial Regulation	---	---	---

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

Note: (...) refers to the number of article

4.2. The Legal Drafting Process of *Perdas* in Research Districts

4.2.1. Blitar District

The migrant workers *perda* in Blitar went through a long process. The initiative ~~was already~~ started in 2003 when some NGOs, with the support of UNIFEM, raised the idea of formally protecting Blitar migrant workers through *perda*. The two main NGOs are SBMB (Serikat Buruh Migran Blitar, Blitar Migrant Worker Association) and Association for Women and Migrant Workers (Paguyuban Peduli Perempuan dan Buruh Migran, P3BM). Other NGOs involved are the Post Institute, Lapesdam NU, and Sitas Desa.

The process was interrupted for some time in 2004 due to national elections and continued with district election in 2005. In 2006, the parliament, in particular the commission IV in charge of manpower, agreed to embrace this idea and intensified the legal drafting process.

In early 2008, the Blitar parliament agreed to include *raperda* (*rancangan perda*, the draft of *perda*) on migrant workers into the prolegda (program legislasi daerah, local legislation program). Entering prolegda 2008 meant that *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 NGOs. After several meetings with various stakeholders, the parliament approved the *perda* on December 17th, 2008. The day after, on the migrant day

which was on December 18th, 2008, the head of the district signed *Perda* No. 16/2008 concerning Protection of Indonesian Migrant Workers in Foreign Countries.

After the signing and the numbering of the *perda*, the legislating process should have been continued with the recording the *perda* in the Local Legislation Book. But this was not done by the District Secretary.²² Consequently, the *perda* could not be enforced. This certainly was ironic because in August 2009, the Blitar parliament won the autonomy award from the Jawa Post Institute of Pro-Otonomy (JPIP). The Institute regarded the Blitar parliament as having good initiatives in passing *perda* on the protection of migrant workers.

Reluctance to fully legislate the *perda* roots back to the fact that the *perda* came from parliament initiative. The Executive, in this case the Head of Disnakertrans, felt somehow excluded in the discussion.²³ The NGO activist denied this complaint. According to him, the district agency was always invited in the meeting. This problem occurred because during the policy process, which was from 2003 to 2008, the head of Disnakertrans changed several times. As a result, the successors felt left behind in the process.²⁴

Furthermore, the Disnakertrans at the district 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*.²⁵ The letter recommended that the title of *perda* be changed taking into account the substance of *perda* mostly covered Protection Commission. Hence, the proper title of the *perda* should have been Protection Commission, in their opinion.

Following the provincial assessment, legal analysis was also carried out at the district level. Widiarto (2010) presented some findings against the *perda*. First, the title of *perda* was considered incorrect. The *perda* titled "Protection of Blitar District's Migrant Worker in the Foreign Countries" implies that the local government has the power to deal with foreign countries which is against its area of jurisdiction. This implication is also clear in article 22 (1) of the *perda* which requires the Disnakertrans to supervise Blitar migrants working overseas: this task that cannot be performed by Disnakertrans. Second, the provisions of Protection Commission have not been integrated with the rest of the provisions in *perda*. On the contrary, it has raised new provisions: the existence of shelter for migrant workers. Third, there exists a contradiction on the party charge of protection. Article 27 (1) stipulates that Protection Commission is in charge of protection, meanwhile article 14 (1) states that the private recruitment agency is responsible for protection of the migrants. Fourth, some provisions, for example class action, should be ruled by the law, and not by *perda*.

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

²² Ironically, he was the one giving number of the *perda* but refused to book the *perda* in district legislation paper. Hence, the *perda* is unenforceable.

²³ Discussion with some officials in the Manpower Agency on 21 June, 2010

²⁴ Discussion with SBMB activist (M.S.) on June 21st, 2010

²⁵ Letter from Provincial Secretary on behalf of Governor of East Java No. 188/11173/013/2009 date 31 July 2009 regarding Assessment of Blitar's *Perda* No. 16/2008

4.2.2. West Lombok District²⁶

In 2006, local NGOs: Koslata and PPK were committed to assist the local government to proceed with 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 would-be migrants, ex-migrants, and migrant families, and relevant stakeholders at the village levels. Five migrant-source villages were picked out purposively, each conducted 10 thematic discussions where problems were mapped, clustered, and their solutions were formulated.

At the district and provincial level, 10 discussions were also held to follow up findings at the village level. The discussions involved various stakeholders and the legal drafting team. Finally, a public consultation was conducted with private recruitment agencies before a public hearing with local parliament. Lobbying with local parliament members was very important to ensure that they finally agree with the *raperda*.

Overall, the process took less than 1.5 years. The legal drafting team is composed of (i) Koslata and PPK; (ii) Legal Department of the District Head Office; (iii) Head of Disnakertrans; and (iv) Academics. The inclusion of these stakeholders was done so to get their commitment and ownership of *perda*. In reality, however, the backbone of the legal drafting team was Koslata and PPK, instead of the rest of the stakeholders.

Finally, the *perda* was legislated on 14 March 2008. But the implementation of *perda* was hampered by the district executive election and then the national election. Following the district executive election, the administration was reshaped. Unfortunately, the selected Head of Manpower Agency was an ex-sub district head who knew nothing about employment, let alone migrant workers. This worsened the implementation of the *perda*.

4.2.3. Ponorogo District

From 2005 to 2006, Plan International together with JKPS Cahaya (Jaringan Kerja Perlindungan Sosial Cahaya, Social Protection Labour Network), a local NGO in Ponorogo took the initiative to draft a protection *perda*.²⁷ The overall process of legal drafting brought together some NGOs, local government officials, and parliament members and academics.

In 2006, the *perda* had come to its fourth revision. An officer of Protection Commission on Women and Children explained the cost had reached no less than Rp100 million spent, yet JKPSK failed to convince Disnakertrans as well as the local parliament to agree with the draft.²⁸ JKPS Cahaya held several demonstrations to push the local government to react. However, 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 *perda*. Hence, the *raperda* was left unused until now.

²⁶ Interview with Koslata officer (S., male about 50 years old) on 24 October, 2010; and with PPK officer (H., about 45 years old) on 21 October, 2010.

²⁷ Interview with officers of PUSAR, who are C.A. (male, about 30 years old) and T. (male, about 25 years old). Interview was done on 30 June, 2010. Interview with JKPS could not be carried out as its office was moved out of Ponorogo. Even worse, C.A. said that JKPS has closed its operation. Nevertheless, one of its former officer was invited (through PUSAR) to FGD at the district level but he left the discussion afterwards for unknown reason.

²⁸ Interview with officer of Protection Commission of Women and Children, named R. (female, about 30 years old) on 28 June, 2010

4.2.4. Central Lombok District

The preparation for the legal drafting began in 2004 when the PPK (Perhimpunan Panca Karsa, United of Five Ideas) approached the Manpower Agency to formulate the protection *perda*. Funding from this initiative came from TIFA Foundation.

From 2005 to 2006, the discussion was intensified until the legal drafting got its final version. However, the draft was rejected by the local parliament.²⁹ One important reason of rejection is that the substance of *perda* itself was just duplicating UU PPTKI and therefore it would be of no urgent use.³⁰

4. 3. Comparing the Outcomes and the Enabling Conditions in Four Districts

Retrieving information from four visited districts, we constructed table 6. Some important highlights of the table are as follows. First, the duration of policy process is too short, such as one year in the case of Ponorogo, is certainly insufficient to advocate protection *perda*. However, if it is too long, and thus the policy process will encounter very frequent transfer of government staff which can significantly delay the success of the policy process, dan demotivate morale of the stakeholders. This is the case of Blitar where the successors were not familiar with the passed stage of policy process.

Second, the *raperda* of Ponorogo and Central Lombok that we reviewed reveal that they both fall into type 3 of our typology. In other words, both regulate placement rather than protection, compared to *perda* of Blitar and West Lombok. Since the *raperda* was similar to UU PPTKI, the executive and legislative in these two districts were not interested and did not show commitment in passing them.³¹

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.³² Engagement with local parliament was a smart solution because local government did not seem to agree with protection *perda* in the first place. Unfortunately, even after approval from the parliament, the *perda* could not be enforced as it was not recorded in the District Legislation Book.

²⁹ There are two version of who rejected the draft. According to Z.(male, about 40 years old), officer of Legal Department of District Head Office of Central Lombok, the local parliament rejected the law (interview on 29 October, 2010). However, according to informant from Disnakertrans Central Lombok (W., male, about 50 years old, interview on October 29th, 2010), the executive disagreed with the idea of having protection *perda*. He said that he was one of the team that criticized the *raperda*..

³⁰ Information came from informant from Disnakertrans, W. (male, about 50 years old, interview on 29 October, 2010)

³¹ Information came from informant from Central Lombok Disnakertrans, W. (male, about 50 years old, interview on 29 October, 2010). The same reason also mentioned by informants from Disnakertrans of Blitar who rejected the protection *perda*, H.S. (male, about 50 years old, 21 June 2010), Y. (male, about 40 years old, 21 June 2010), R. (male, about 40 years old, 21 June 2010). However, one should be careful with the statement that "perda just copy paste the UU PPTKI" as it could be just an excuse to reject local initiative

³² Interview with parliament members G.T. (male, about 40 years old, 22 June 2010) and S (female, about 40 years old, 22 June 2010)

Table 6. General information about the local initiative of Protection *Perda*

	Blitar	Ponorogo	Lombok Barat	Lombok Tengah
Donor agency	UNIFEM	Plan International	European Union, and Yayasan TIFA	Yayasan TIFA
Advocating NGOs	SBMB, P3BM	JKPS Cahaya	Yayasan Koslata, PPK	PPK
Establishment of NGO	SBMB in 2002	Unknown, but dissolved in 2009	Yayasan Koslata in 1989, PPK in 1988	PPK in 1988
Duration of policy process	2003 – 2008	2005 - 2006	2006 – 2008	2004 – 2006
Legal drafting process	2007-2008	2005-2006	2006-2007	2005-2006
Prolegda	2008	Fail to be included in prolegda 2007. Rejected by executive & legislative	2007	Fail to be included in prolegda 2006. Rejected by executive & legislative ^b
Legislation date of <i>perda</i>	18-12-2008 ^c	---	14-3-2008	---
Initiative of <i>perda</i>	Legislative's initiative	Supposed to be executive's initiative	Executive initiative	Supposed to be executive's initiative
Substance of <i>perda</i> ^a	Protection	Placement	Protection	Placement

^a Author's review

^b There are two version of who rejected the *raperda*. According to Z (male, about 40 years old, 29 October 2010), officer of the Legal Department of District Head Office, the local parliament rejected the *perda*. However, according to the Head of Disnakertrans in Central Lombok, W. (male, about 50 years old, 29 October 2010), the executive disagreed with the idea of having specific overseas employment *perda* which only copy paste the substance of UU PPTKI.

^c It was the date on which the District Head signed the *perda*

Table 7 compares four main stakeholders during the policy process: local government, local parliament, advocating NGOs, and the PPTKIS. Local government – Disnakertrans, Legal Department of District Head Office, District Secretary, Head of Bappeda (Local Agency for Development Planning) – is particularly important as it is the implementer of *perda*.³³ Therefore, NGO capacity to convince them to join the policy process is very important.³⁴ Meanwhile, it is also crucial the get parliament members approval of the *raperda*, to bring the *raperda* into the *Prolegda*, and further to legislate it.

In the policy process, commitment is a must. Koslata and PPK, in particular, chose West Lombok to advocate protection *perda* because they were certain that the district government of West Lombok had high commitment in protecting the migrant workers.³⁵ The commitment of local government as well as local parliament does not, however, stand on its own. It depends on the substance of *raperda*, such as the case of Central Lombok. It also

³³ These officials were included in the legal drafting team

³⁴ The policy process in West Lombok was more systematic. Both Koslata and PPK were the “old players” in development industry in West Nusa Tenggara. Koslata is well known to have the capacity as an advocating NGO which has partnership not only with executive but also with legislative, and not only at the district level but also at the provincial level. Therefore resistance of their partners was minimal. In the case of West Lombok, the process of advocacy at the district level was done by Koslata. Meanwhile the process of collecting aspiration from the village level was done by PPK which has the capacity as community empowerment NGO

³⁵ Interview with M.S. (NGO activist, male, about 50 years old, 23 October 2010)

depends on the substantial and technical capacity of the NGO 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 about gender issues. This is expressed by a gender activist in Ponorogo.³⁶ At the same time, general mindset of local government is that the placement and protection of migrant workers is the task of central and not local government. For example, an official interviewed believed that local government at present could not arbitrarily establish *perda* without the approval of central and provincial governments.³⁷ In the case of Central Lombok an informant from Disnaker was concerned that the *perda* would disturb the migration outflow which could further cause high unemployment at the district level.³⁸ The other said that local government would not be able to protect the workers' in the destination countries as it fell beyond its jurisdiction.³⁹ Also, many fear of insufficient budget and capacity to carry out the mandate of the *perda*.⁴⁰ In West Lombok, an informant from PPK was concerned that APBD (Anggaran Pendapatan Belanja Daerah, Local Budget) has not been able to accommodate an increase of budget due to increase in roles and responsibilities.⁴¹ In all visited districts, it was observed that 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 still remain during the implementation of *perda*. SBMB and P3BM tend to take a contestation position, i.e., to push from the outside. Meanwhile NGOs in West Nusa Tenggara are likely to engage and to work together with local partners. We observe that in East Java friction between NGOs and local government is still apparent. In West Nusa Tenggara, particularly in West Lombok, local government is quite open to NGO participation in policymaking thanks to the development of trust over some decades.⁴² Trust is therefore vital to success.

To add, physical distance between advocating NGOs and the local counterparts become another factor influencing physical interaction. In the case of Central Lombok, PPK is located in Mataram, about two hour travel from Praya, the capital city of Central Lombok. Meanwhile, in the case of West Lombok and Blitar, the stakeholders are close physically.

³⁶ Interview with informant of Local Commission on Protection Women and Children, R. (female, about 30 years old, 28 June, 2010)

³⁷ Interview with informant from Head of Legal Department, District Head Office, Ponorogo, M. E. (male, about 50 years old, 28 June 2010). Interview with informants from Disnakertrans of Blitar who rejected the protection *perda*, H.S. (male, about 50 years old, 21 June 2010), Y. (male, about 40 years old, 21 June 2010), R. (male, about 40 years old, 21 June 2010).

³⁸ Interview with informant from Disnakertrans of Central Lombok, W. (male, about 50 years old, 29 October 2010)

³⁹ Interview with informant from Head of Legal Department, District Head Office, Central Lombok, Z. (male, about 50 years old, 29 October 2010). Interview with informants from Disnakertrans of Blitar who rejected the protection *perda*, H.S. (male, about 50 years old, 21 June 2010), Y. (male, about 40 years old, 21 June 2010), R. (male, about 40 years old, 21 June 2010).

⁴⁰ Interview with informant from Bappeda of Ponorogo, M. (male, about 50 years old, 28 June 2010)

⁴¹ In 2010, the budget of Protection Commission came from Revised APBD, whose sustainability was in question

⁴² The history of NGO movement in NTB dated back in 1982 (Dahlan, 2000) which is much earlier than that in East Java.

Table 7. General information about internal factors: the stakeholders and their relationship

	Blitar	Ponorogo	Lombok Barat	Lombok Tengah
Commitment of Local government	Low	Low	High	Low
Commitment of Local parliament	High	Low	Moderate	Low
Capacity of advocating NGOs	Good capacity to formulate legal drafting. Capacity to lobby executive is not sufficient	Not known	Good capacity to formulate legal drafting. Good capacity to lobby executive and legislative	Good
Trust, relationship and interaction	Distrust, low interaction. In particular between NGO and Disnakertrans. Good relationship between NGO and parliament members	NGO not well known to stakeholders in Ponorogo. Low interaction between NGO and other stakeholders	Trust, intensive interaction	Trust but not intensive interaction
Position of advocating NGOs	Contestation ^a	Contestation ^b	Engagement	Engagement
Physical distance between NGO and other stakeholders	Close	Far	Close	Far
Intervention from PPTKIS	High	Some members of parliament own PPTKIS	Unaware	Unaware

^a This was observed from interview and during Focus Group Discussion at the district level where NGOs and local government were present

^a JKPS Cahaya held demonstration several times

The involvement of PPTKIS is another issue to consider. The advocating NGOs in West Lombok deliberately excluded PPTKIS from the policy process. The reason was straightforward: almost all PPTKIS were profit oriented and would only hamper the overall process. Koslata and PPK unanimously agreed to exclude them in the legal drafting. PPTKIS were only invited in the public consultation at the end of the process.⁴³ Because of this, PPTKIS were not aware of the existence of *perda* in West Lombok.⁴⁴ In Ponorogo, the intervention of PPTKIS was serious. In 2006 the *raperda* was submitted to be included in prolegda 2007. Many of the parliament members who were known to own and to have relatives owning PPTKIS, rejected the *raperda*.⁴⁵ In Blitar, PPTKIS were against the discussion of the *raperda* in the parliament (Ecosocrights, 2008). They threaten to move out of Blitar if the *raperda* was passed.

However, compared to West Lombok, the *perda* of Blitar stipulates more demanding roles and responsibilities of PPTKIS (table 8). Hence, their resistance in Blitar is stronger than in West Lombok.

⁴³ Interview with M.S. (NGO activist, male, about 50 years old, 23 October 2010)

⁴⁴ Interview with informants from PPTKIS in West Lombok, namely A. (male, about 30 years old, 21 October 2010), F.A. (female, about 50 years old, 22 October 2010), T. (male, about 40 years old, 26 October 2010)

⁴⁵ Interview with officer of Protection Commission of Women and Children, named R. (female, about 30 years old) on 28 June, 2010

Table 8. Roles and responsibilities of PPTKIS in Blitar and West Lombok

Blitar District (<i>Perda</i> No. 16/2008)	West Lombok District (<i>Perda</i> No. 5/2008)
<p>To recruit and select the workers; to disseminate information about the work, requirements, and obligation of the workers (a. 6)</p> <p>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)</p> <p>To monitor and protect workers in destination country; to take care of the sick workers or passed away workers; to organize the return of the workers (a. 14)</p>	<p>To establish a branch office in WNT; to establish a service office in West Lombok (a. 4)</p> <p>To appoint field officers to recruit who are either the staff or non-staff; to equip the field officers with ID card legalized by District Manpower Agency (a. 5)</p> <p>To submit written report on the progress of the migrants in the destination countries biannually (a. 16)</p>

Source: *Perda* No. 16/2008 of Blitar District; *Perda* No. 5/2008 of West Lombok District

Note: (...) refers to the article number of the *perda*

External factors are the factors out of control of the stakeholders, which are election time, transfer of government staff, finance from donor, and other incentives (table 9). Election time can be good, but it can also be bad for the decision making process. For example, the date of election in Blitar and West Lombok was in favour of the policy process (table 6). One should understand that the passing *perda* itself has a political economy aspect, particularly prior to election.

In Blitar, the *prolegda* took place in 2008. The next “supposedly-legislation” date of *perda* was 18 December 2008 on the international migrant worker day. The incumbent members of parliament had enough to prove their support to the migrants prior to the legislative election, which was 6 March 2009. In West Lombok, the *perda* entered into the *prolegda* in 2007. It was officially legislated on 14 March 2008, prior to the first and second rounds of local executive election time occurred twice: on 30 October 2008 and on 15 December 2008; and even prior to legislative election on 6 March 2009. In migrant-source districts, the incumbents could use policy in favour of migrant workers to gain vote from them. Thus, in these two districts, the timing of the policy process gave incentive to the legislative members to commit to the legislation of *perda*. Unfortunately, favorable election timing did not concurrent with the policy process in Ponorogo and Central Lombok. Legislative members in Blitar were also encouraged with the Jawa Post Autonomy Award. The award was given to the local parliament after completing the policy process of protection *perda*, which was the legislative’s initiative.

Election time might be a good incentive to legislation. However, to NGOs in West Lombok, 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 implementation was very slow.⁴⁶ 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 will certainly impede the implementation.

Transfer of government staff was unanimously considered to weaken public service delivery (see box 2). This was the concern of not only among NGOs but also government officers. Transfer not only happens too often but it 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 advance. Indeed, no one benefits from unnecessary transfer of staff, except the rent seekers.

⁴⁶ Interview with informant from PPK, H. (female, about 40 years old, 21 October 2010)

Box 2. Damaging Aspect of Decentralization

Transfer of staff has become a regular phenomenon ever since direct pilkada was introduced starting in 2004. Pilkada has made the supposedly neutral bureaucracy into political bureaucracy. Being vehicle for power and, hence, financial gain, pilkada involves numerous candidates and, certainly, the incumbent. Prior to pilkada, the incumbent district head and his/her success team observe the loyalty of his/her staff. They shift the staff, giving the prosperous sectors or occupations to the ones they trust most. The game becomes even more complicated if the district deputy also registers his/herself to be the candidate. The direct pilkada has experience disharmony between district head and his/her deputy a year or two prior to the election time.

Why, then, should the bureaucracy, in this case the head of the local agency, take side of the pilkada candidates? The answer is simple: damn if you do, damn if you don't. 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. In practice, it is nothing less than gambling.

Our informants observed that the tendency of staff transfer has become worse and more frequent lately. In the first direct pilkada, only the echelon one which is the local agency head, that is transferred. Now, it includes echelon two and even three.

Unfortunately, qualification of staff with their new position is put as the last and least consideration. One would find the health district agency to be occupied by a person with 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 reason. Their successors have to start from square one in building the new database. Imagine what its impacts would be to public service delivery!

Source: Interview with informant from Asosiasi Buruh Migran Bumi Gora of Central Lombok, M. (female, about 40 years old, 29 October 2010; S. (female, about 30 years old, 29 October 2010); informant from BPS (Badan Pusat Statistik, National Agency of Statistic) of Central Lombok, S. (male, about 40 years old, 29 October 2010), informant from Disnakertrans in Central Lombok, W. (male, about 50 years old, 29 October 2010), informant from NGO, K. (male, 40s years old, 28 October 2010).

Table 9. General information about external factors

	Blitar	Ponorogo	Lombok Barat	Lombok Tengah
Timing of legislative election	5-4-2004 6-3-2009	5-4-2004 6-3-2009	5-4-2004 6-3-2009	5-4-2004 6-3-2009
Timing of executive election	27-11-2005 9-11-2010	20-6-2005 3-7-2010	20-10-2005 30-10-2008 (first round) 15-12-2008 (second round)	27-6-2005 7-6-2010 (first round) 23-9-2010 (second round)
Transfer of staff	Very frequent New comers not fit the job	Moderately frequent. New comers not fit the job	Frequent. New comers not fit the job	Very frequent. New comers not fit the job
Finance from donor agencies	Sufficient, donor could finance long policy process	Insufficient, no more effort after rejection	More than sufficient. The policy process involved intensive & extensive discussions in village, district levels, lobby, public consultation, and campaign	Insufficient, no more effort after rejection
Other incentive or disincentive	Local parliament has incentive to win Jawa Post Autonomy Award	---	---	---

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 sending district requires funding. Without sufficient funding, local NGOs alone would not succeed. In the case of Ponorogo and Central Lombok, the duration of funding was very limited. Once the *raperda* was rejected to enter the *proledga*, the funding stopped. Meanwhile in Blitar donors were able to extend their support so that the *raperda* could finally obtain approval from the legislative.

CHAPTER 5 CONCLUSION

Overseas employment has been in the grey area as to whether it should be centralized or decentralized. If it is centralistic, how would the central government deal with 80% of the problem which apparently occurs in the sending villages and districts? Certainly local problems are most efficiently handled by local government. However, if it is decentralized, the question then is: are districts ready to commit themselves in protecting their migrant workers?

Some districts believe that autonomy has opened new opportunities to take initiative and improve public service. But many also see autonomy as a vehicle to collect local ~~own~~ revenue by means of issuing tax and user charge *perdas*. Indeed, employment is one of the areas to extract levies. Many of the *perdas* related to overseas employment do violate the Law No. 28/2009 concerning Local Tax and User Charges. They also violate Law No. 13/2003 concerning Manpower, and the Presidential Regulation No. 36/2002 concerning Ratification of ILO Convention No. 88 concerning Organization of Employment Service. Yet, for many districts freedom to issue *perdas* has been wrongly understood as symbol of independence from central government.

We collected 127 *perdas* from 115 districts which are related to overseas employment. In order to map them according to districts' migrant size, we construct typology as follows. Type 1: general employment perda which is extractive; type 2: general district's revenue *perda* which is extractive; type 3: placement procedure perda which is non-extractive; type 4: protection perda which is non-extractive. We found that out of 127 *perdas*, 81% fall in type 1; 14.2% in type 2; and 2.4% in type 3 and type 4, respectively. In 82 migrant-source districts only 3 districts (3.7%) have protection perda (type 4).

We also performed the mapping analysis where we found that migrant source districts issue both a higher number of and a higher variety of *perdas* related to overseas employment. We found that some districts with very low, or even no migrant workers, do pass type 1 and type 2 *perdas*. These are the transit districts located at the border with neighboring receiving countries, such as Malaysia, Brunei, and Singapore. Many prospective migrants and PPTKIS require administrative services from local government. At the same time, it is not surprising that irregular migration activities also take place in these districts. Interestingly, this mapping exercise found that our typology is not necessarily mutually exclusive. Districts that pass protection *perdas*, such as Sumbawa and West Lombok Districts do pass extractive *perdas* as well. This implies that these districts might have good intention to protect their migrant workers but at the same time they charge the workers directly or indirectly, which is against the law. The only mutually exclusive case is Blitar District which only passes protection *perda* and none of the extractive types.

From the mapping analysis, we also learn that majority of migrant source districts are not ready to commit themselves to protecting their migrant workers. However, some districts do. We picked four districts – Blitar, Ponorogo, West Lombok, and Central Lombok Districts – as our case study. All of them had been given technical assistance through NGOs to formulate protection *perda*. Only Blitar and West Lombok managed to pass the *perda*. Ponorogo and Central Lombok were not ready to do so.

So, what makes some districts able to pass the protection *perdas*? In order to understand this phenomenon, we looked at internal factors: stakeholders and the relationship among them; and external factors which are out of control of the stakeholders.

Our field research showed that each case is unique. It is unique so therefore the outcome cannot be explained in a standard model that applies for each observed district. Duration of the policy process, for example, was too short for Ponorogo, which appeared to be insufficient to pass the *perda*. It was too long for Blitar that it concurred with transfer of staff several times, even if finally the *perda* was issued. However, the optimal duration for West Lombok, which was two years, turned out to not be optimal for Central Lombok.

Substance of the *perda* was one of the reasons why the local government of Central Lombok decided not to proceed with the insertion of *raperda* into the *prolegda*. Apparently, the substance which was similar to the substance of UU PPTKI could not attract the attention of the stakeholders. However, the substance of *perda* in Blitar was innovative and became the reason why local government and PPTKIS were resistant against it.

The advocating NGOs in Blitar and Ponorogo took the position of policy contestation with Blitar successfully, thanks to the willingness of the local parliament to tap this aspiration, while Ponorogo was unsuccessful. In the case of West Lombok, position of policy engagement proved to be more effective, although this is not the situation in Central Lombok.

The intervention of PPTKIS was clear in East Java, resulting in the policy process being disturbed. In Ponorogo, PPTKIS was known to block the inclusion of *raperda* in the *prolegda* through members of parliament who own or are closely related to PPTKIS. In Blitar, the intervention of PPTKIS could be counterbalanced by high commitment of members of parliament, and hence, the *raperda* could be approved. In West Nusa Tenggara, PPTKIS was not aware of *raperda*. With this favorable context, *perda* in West Lombok succeeded to be legislated, but Central Lombok did not.

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

Apart from the above mentioned factors, we found that: (i) trust and commitment of the local government and local parliament; (ii) strong capacity of NGO; (iii) and strong support of the donor agencies are common factors that positively influence the success of *perda* legislation. Commitment of local government, in particular, is essential in the implementation phase. Therefore, engaging them from the onset is to be able to effectively execute the mandate of *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 protection of migrant workers. Finally, 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.

REFERENCE

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.

Bachtiar, Palmira P. et al. (2009) Business Climate in Timor Tengah Utara District: Economic and Regulatory Review (Bahasa Indonesia Version). Report for AusAID-ANTARA
http://smeru.or.id/report/research/iklimusahakupang/iklimusahaflotim_ind.pdf

BNP2TKI (2009) Juhur Rejected Migrants' Passports without Recommendation (Bahasa Indonesia Version)
<http://www.bnp2tki.go.id/berita-mainmenu-231/486-juhur-tolak-paspor-tki-non-rekom.html>

BNP2TKI (2011) BNP2TKI Technical Meeting, BNP2TKI Established 2011 Programs (Bahasa Indonesia Version)
<http://www.bnp2tki.go.id/berita-mainmenu-231/3781-pasca-rakernis-bnp2tki-mantapkan-program-2011.html>

Ecosocrights (2008) PPTKIS Threatens to Move out if Raperda is Legislated (Bahasa Indonesia Version) Radar Tulungagung (31-8-2008)
<http://ecosoc-monitor.blogspot.com/2008/08/puluhan-pjtki-ancam-henggang-jika.html>

Ecosocrights (2009) Local Government Responsible for Migrant Workers (Bahasa Indonesia Version) Pikiran Rakyat (11-1-2009)
<http://ecosoc-monitor.blogspot.com/2009/01/pemda-tanggung-jawab-atas-tki.html>

Jaweng, Robert Endi (2006) About Problematic *Perdas* (Bahasa Indonesia Version). Kompas (24-3-2006)
<http://www.docstoc.com/docs/7907315/Scan-Ihwal-Perda-Bermasalah2>

Komnas Perempuan (2006) Drafting Protection *Perda* with the Perspectives of Human Right and Gender (Bahasa Indonesia Version), Information Paper #4/September 2006. Division of Protection for Discrimination-Vulnerable Groups
<http://www.komnasperempuan.or.id/wp-content/uploads/2009/01/4-membangun-peraturan-daerah-tentang-buruh-migran-yang-berperspektif-ham-dan-berkeadilan-gender1.pdf>

Komnas Perempuan (2006) Guideline to Establish Local Regulation concerning Protection of Indonesian Migrant Workers with the Perspectives of Human Rights and Gender (Bahasa Indonesia Version), Working Paper December 2006
<http://www.komnasperempuan.or.id/2010/08/panduan-menyusun-peraturan-daerah-tentang-perlindungan-buruh-migran-indonesia-berperspektif-hak-asasi-manusia/>

Law No. 13/2003 concerning Manpower (Bahasa Indonesia Version)

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

Law No. 34/2000 concerning Local Taxes and User Charges and its revision in Law No. 28/2009 concerning Local Taxes and User Charges (Bahasa Indonesia Version)

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

Mawardi, S. et al. (2009) Business Climate in Kupang Municipality: Economic and Regulatory Review (Bahasa Indonesia Version) Report for AusAID-ANTARA
http://smeru.or.id/report/research/iklimusahakupang/iklimusahakupang_ind.pdf

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

Presidential Regulation No. 81/2006 concerning Establishment of BNP2TKI

Raksaka, Mahi, 2002, Managing Local Revenue in Indonesia. A paper prepared for a Conference Sponsored by the International Studies Program of Andrew Young School of Policy Studies, Georgia State University, Atlanta on May 1- 3, 2002

Satriyo, Hannah, et al. (2004) Indonesia Rapid Decentralization Appraisal (IRDA) Fourth Report. The Asia Foundation

Soesastro, Hadi (2001) Regional Autonomy and Free Internal Trade
<http://www.pacific.net.id/pakar/hadisusastro/010522.html>

Sudrajat (2009) Jumhur Hidayat vs. Minister of Manpower and Transmigration. Koran Tempo , March, 31st 2009
<http://www.korantempo.com/korantempo/koran/2009/03/31/Opini/krn.20090331.161031.id.html>

The Institute for Ecosoc Rights and Trade Union Rights Center (2008). Handling Modern Slavery from the Villages. Jakarta

Widarto, Aan E. (2010) Judicial Analysis of *Perda* No. 16/2008 concerning Protection of Blitar Migrant Workers in Foreign Countries

Annex 1. Typology of *Perdas* Related to Overseas Employment

TYPE 1 <i>PERDA</i>				
Quantile	# migrants ^a	District/Municipality	No. /Year	Title of Perda
1	0	Berau District	18/2002	Employment Service Fee ^a
1	0	Murung Raya District	22/2003	Employment Service Fee ^a
1	1	Samarinda Municipality	10/2001	Employment Service Fee ^a
1	3	Banjarbaru Municipality	10/2002	Employment Service Fee ^a
1	5	Bangka District	8/2003	Employment Service Fee ^a
1	9	Pelalawan District	12/2003	Workers Placement and Protection Fee ^a
1	10	Bontang Municipality	6/2002	Employment Service Fee ^a
1	10	Bontang Municipality	7/2002	Employment Permit Fee
1	13	Prabumulih Municipality	4/2003	Employment Service Fee ^a
1	14	Kutai Kertanegara District	13/2001	Skill Development Fund for Migrants ^{a c}
1	14	East Kutai District	18/2002	Skill Development Fund for Migrants ^{a c}
1	14	East Kutai District	20/2002	Employment Service Fee
1	14	Kota baru District	7/2003	Employment Service Fee ^a
1	22	Pasir District	7/2003	Employment Service Fee ^a
2	36	Lubuklinggau Municipality	11/2004	Employment Service Fee
2	39	Magelang Municipality	19/2001	Employment Permit Fee ^a
2	56	Bogor Municipality	7/2003	Employment Permit Fee
2	59	Bitung Municipality	13/2001	Employment Fee ^a
2	63	Banda Aceh Municipality	9/2003	Employment Service Fee
2	70	Rokan Hulu District	18/2003	Report Obligation of Vacancy and Placement
2	72	Bolaang Mangondow District	21/2001	Employment Permit Fee
2	72	Bolaang Mangondow District	22/2002	Employment Service Fee
2	80	Banjarmasin Municipality	10/2003	Employment Service Fee
2	103	Toba Samosir District	5/2003	Employment Supervision & Protection Fee
2	112	Malinau District	16/2002	Employment Service Fee
2	113	Dumai Municipality	10/2004	Employment
2	114	Musi Banyuasin District	19/2002	Employment Service Fee ^a
2	124	Bengkulu Municipality	5/2003	Employment Permit Fee
2	124	Bengkulu Municipality	6/2003	Employment Service Fee
2	126	Tangerang Municipality	13/2002	Employment Service Fee
2	145	Manado Municipality	6/2002	Employment Placement and Protection Fee ^a
2	149	Central Tapanuli District	46/2001	Employment Supervision & Protection Fee
2	168	East Luwu District	16/2006	Employment Permit and Service Fee
2	171	Ogan Komering Ulu District	11/2005	Report Obligation of Workers' Placement
2	173	Batang Hari District	40/2001	Employment Permit Fee
2	174	Bungo District	2/2002	Local Revenue from Employment
3	232	Rejang Lebong Municipality	10/2002	Job Seekers Registration Fee & Employers' Fee
3	258	Muara Enim District	24/2001	Employment Permit
3	282	Bandung Municipality	19/2002	Employment Service Fee ^{a b}
3	286	Makassar Municipality	9/2004	Rules on Employment Services Fee ^a
3	316	Kuantan Singingi District	7/2003	Workers Placement
3	359	Nunukan District	43/2003	Employment Service Fee ^a
3	373	Hulu Sungai Selatan District	14/2002	Employment Service Fee ^a
3	386	Mamuju District	9/2002	Employment Permit Fee ^a
3	431	Cilegon Municipality	12/2004	Employment Service Fee
3	501	Dairi District	5/2002	Employment
3	504	Surabaya Municipality	1/2003	Employment Service Fee ^a
3	536	Madiun Municipality	8/2004	Employment Service Fee ^a
3	595	Kupang Municipality	14/2007	Employment

3	634	Sidoarjo District	9/2008	Employment Service ^b
3	687	Mojokerto District	4/2009	Employment Fees
3	697	Binjai Municipality	5/2003	Employment Supervision & Protection Fee
3	738	North Bengkulu District	12/2003	Employment Service Fee ^a
3	755	Pemalang District	5/2008	Employment Service Fee
3	802	Bandar Lampung Municipality	10/2003	Employment Fee ^a
4	945	Mataram Municipality	7/2002	Employment Service Fee ^a
4	1013	Luwu Utara District	34/2001	Employment Permit
4	1021	Sukoharjo District	30/2001	Employment Permit Fee
4	1021	Sukoharjo District	31/2001	Employment Service Fee
4	1052	Kampar District	20/2003	Employment Service Fee
4	1110	Palembang Municipality	22/2001	Employment Support Fee
4	1139	Donggala District	11/2002	Business License of Private Recruitment Agency
4	1139	Donggala District	12/2002	Employment Recruitment Fee
4	1230	Maros District	18/2002	Employment Rules and Fee ^a
4	1304	Pasaman District	16/2003	Employment Service Fee
4	1310	Jeneponto District	5/2002	Employment Service Fee
4	1357	Bantul District	1/2005	Employment Placement
4	1359	Purbalingga District	6/2001	Employment Permit and Service Fee
4	1421	Bekasi District	5/2001	Employment Service Fee ^a
4	1583	Medan Municipality	7/2003	Employment Service Fee
4	1637	Bogor District	4/2009	Employment License
4	1719	Malang Municipality	13/2007	Rules on Employment Service Fee
4	1954	East Aceh District	9/2003	Employment Service and Permit Fee
4	2227	Gowa District	5/2002	Employment Service Fee
4	2263	Sikka District	24/2001	Employment Placement Fee ^a
4	2487	Sumedang District	6/2002	Employment Fee ^a
4	2802	Dompu District	16/2001	Employment Service Fee
4	2929	Tasikmalaya District	2/2006	Employment Service Fee
4	3158	Tana Toraja District	8/2003	Employment Permit Fee
4	3534	Banjarnegara District	3/2003	Migrants' Placement
5	4202	Magelang District	15/2005	Employment Permit Fee
5	4843	Sragen District	10/2004	Employment Permit Fee
5	5388	Pinrang District	7/2003	Employment Service Fee
5	5853	Bima District	158/2006	Employment Service
5	6834	Tangerang District	21/2002	Employment Service Fee
5	7162	Kebumen District	52/2004	Employment Fee ^a
5	8304	Sumbawa District	12/2003	Employment Service Fee
5	8879	Lumajang District	28/2004	Employment License
5	10124	Kerinci District	11/2002	Employment Fee ^a
5	10891	Purwakarta District	18/2002	Employment Service Fee
5	11489	Bone District	10/2002	Employment Permit Fee
5	13141	Kediri District	8/2003	Employment Service Fee ^a
5	14469	Jember District	12/2003	Employment Fee ^a
5	17666	Serang District	7/2009	Employment
5	17967	Bandung District	26/2001	Employment Permit and Service Fee
5	19035	Subang District	7/2002	Employment Fees ^b
5	25122	Gresik District	14/2005	Employment Permit and Service Fee
5	26896	Ponorogo District	6/2004	Employment Service Fee ^b
5	29201	Sukabumi District	13/2005	Mobilization of Migrant Workers
5	32380	Malang District	7/2005	Employment Service ^b
5	36192	Karawang District	22/2001	Employment Service Fee ^a
5	38715	Tulungagung District	12/2002	Employment License
5	57067	Indramayu District	6/2003	Employment Fees ^{a b}
TYPE 2 PERDA				
Quantile	# migrants	District/Municipality	No. /Year	Title of Perda

1	3	North Barito District	6/2005	Legalization charges ^b
1	13	East Kotawaringin District	2/2002	Legalization charges ^b
2	157	Musi Rawas District	11/2002	Legalization charges ^b
3	297	Tasikmalaya Municipality	23/2003	Legalization charges ^b
4	935	Sidenreng Rappang District	31/2001	Third Party Contribution ^b
4	1405	Soppeng District	11/2001	Third Party Contribution ^b
4	2802	Dompu District	20/2001	Legalization charges ^b
5	4581	Jepara District	17/2001	Administration Fee ^b
5	5853	Bima District	25/2001	Legalization charges
5	5998	Garut District	34/2001	Third Party Contribution ^b
5	6296	Lembata District	6/2005	Administration Fee ^b
5	6534	Magetan District	25/2000	Administration Fee ^b
5	9754	Banyuwangi District	28/2002	Third Party Contribution ^b
5	18237	West Lombok District	13/2002	Other Legitimate Local Revenues ^b
5	23750	East Flores District	4/2005	Administration Fee
5	37696	Central Lombok District	31/1995	Third Party Contribution
5	38126	Cirebon District	7/1987	Third Party Contribution ^b
5	49126	Cianjur District	8/2001	Legalization charges ^b
TYPE 3 PERDA				
Quantile	# migrants	District/Municipality	No. /Year	Title of Perda
5	14469	Jember District	5/2008	Service, Placement, and Protection of Indonesian Migrant Workers ^b
5	41209	East Lombok District	12/2006	Protection of Indonesian Migrant Workers ^b
5	49126	Cianjur District	15/2002	Protection of Indonesian Migrant Workers ^b
TYPE 4 PERDA				
Quantile	# migrants	District/Municipality	No. /Year	Title of Perda
5	8304	Sumbawa District	21/2007	Protection and Empowerment of Migrant Workers ^b
5	18237	West Lombok District	5/2008	Protection of Indonesian Migrant Workers ^b
5	28430	Blitar District	16/2008	Protection of Indonesian Migrant Workers in Foreign Countries ^b

Note:

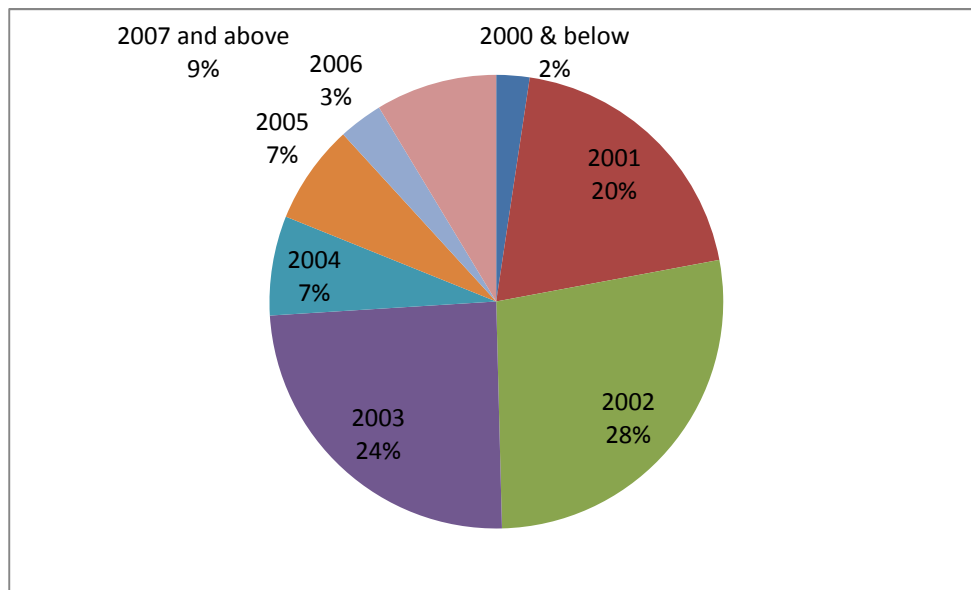
^a Ministry of Home Affairs has issued cancellation to this *perda*

^b Copy of perda is available

^c Categorized as type 1 because it was cancelled by Ministry of Home Affairs. One of the reasons of cancellation is the *perda* imposes fee that is burdensome to investment climate

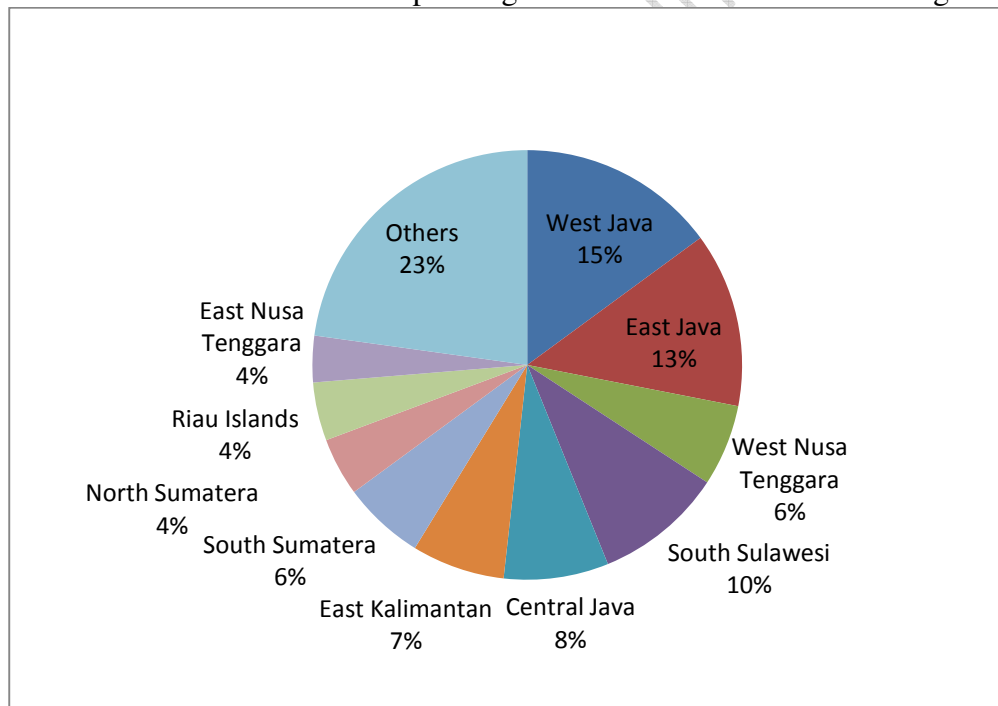
^d Number of migrants based on 2005 Village Potential Census

Annex 2. Distribution of *Perdas* Based on Their Issuing Year



Note: Total number of perda = 127

Annex 3. Distribution of Corresponding Provinces of the Districts issuing Perdas



Note: Total Number of District = 115