

## SUPPORTING LOCAL GOVERNMENT IN THE GOVERNANCE OF OVERSEAS EMPLOYMENT<sup>1</sup>

### I. Background

Indonesia faces enormous challenges in emigration governance. With an annual placement of not less than half a million people, three quarters of whom are women working in the domestic sphere, overseas employment is indeed a task too huge for the central government to handle alone. More often than seldom, the issues of human rights emerge in combination with the massive outflow of migrant workers.

Overseas employment itself is a long and complex process which involves the authority at the village, kabupaten/kota (district/city), provincial, national level up to the one at the destination country. The Head of the National Agency for Placement and Protection of Indonesia Migrant Workers (BNP2TKI) admitted that 80% of the problems facing migrant workers are encountered domestically (BNP2TKI, 2009). Problems such as identity fraud, cheating, extortion, detention, etc. occur at the sending villages and kabupaten/kota, beyond the span of control of the central government. Therefore, they should be best dealt with by the local government.

The local government has its own interest in protecting the migrant workers. First, the remittance is much more significant locally than nationally, particularly in migrant source kabupaten/kota. For example, at the national level remittance only contributed to 1.6% of the gross domestic product (GDP) in 2006 (Ananta, 2009).<sup>2</sup> In Kabupaten Blitar and Ponorogo, the ratio of remittance to the gross regional domestic product (GRDP) reached 4.4% and 6.3% respectively in 2006. In Kabupaten Lombok Barat, the ratio in 2006 is even more spectacular, reaching 24.3% (Bachtiar, 2011a). Second, the social costs of emigration, such as family cohesion and juvenile delinquency are also more significant at the local level than at the national level. Therefore, providing services and protecting the



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migrant workers should be the main priority of the local government so as to maximize the advantages and minimize the disadvantages of emigration.

### II. Key Findings

Two main legal references in the decentralized governance of overseas employment are Law No. 39/2004 concerning the Placement and Protection of Indonesian Migrant Workers and Government Regulation No. 38/2007 concerning Division of Affairs between National and Subnational Governments. The latter assigns much more responsibilities than the former. Adding to the original responsibilities mandated by Law No. 39/2004, Government Regulation No. 38/2007 inserts some more responsibilities which used to be PPTKIS' tasks under Law No. 39/2004 as well as some other responsibilities to support the central government's duties.

Government Regulation No. 38/2007 all together outlines thirteen responsibilities of the local government which

<sup>1</sup> This policy brief is drawn from the IDRC's funded study on The Governance of Indonesian Overseas Employment in the Context of Decentralization (Bachtiar, 2011b) final draft version.

<sup>2</sup> This is much less than that of the Philippines' which contribution comparatively reached 13% of its GDP in the same year.

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includes: (i) information dissemination; (ii) registration of the workers; (iii) selection of the workers; (iv) supervision of recruitment; (v) facilitation of bilateral and multilateral agreement implementation; (vi) permit for private recruitment agency (PPTKIS) to establish branch office; (vii) recommendation of worker's passport; (viii) information dissemination regarding computerized data system of overseas employment (SISKO TKLN) and the supervision of compliance in paying the protection fee (USD15); (ix) socialization of the contents of placement and work contracts; (x) assessment and validation of placement contract; (xi) assistance, supervision, and monitoring of placement and protection of the migrants; (xii) permit for PPTKIS to establish shelter; (xiii) home return service.

It is good that the local government is more intensively involved in emigration governance. However, two questions need answers. First, to what extent is the local government aware of and committed to performing these extended tasks? Second, is it capable of performing them?

Our nationwide assessment on local regulations (perda) related to overseas employment shows nothing but unsurprising results. Out of a total of 127 perda related to overseas employment passed by 115 kabupaten/kota governments from 1985 to 2008, 121 perda (95%) are perda on retribusi<sup>3</sup>. The kabupaten/kota governments can charge migrant workers directly when they register themselves as prospective migrant workers and when they ask for a recommendation during passport application. They can also charge the workers indirectly by charging private recruitment agencies excessively. Out of the remaining six perda on non-retribusi (5%), three perda produced by Kabupaten Cianjur, Kabupaten Lombok Timur, and Kabupaten Jember focus on placement procedures. The other three perda of Kabupaten Lombok Barat, Kabupaten Blitar, and Kabupaten Sumbawa focus on the protection of migrant workers.

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Perda charging workers for administrative services are against Presidential Regulation No. 36/2002 concerning the Ratification of ILO Convention No. 88 concerning the Organization of Employment Service. In general, Article 6 (b) of the law instructs the government at all levels to speed up workers' mobility domestically and internationally. In more detail, Article 38 (1) of Law No. 13/2003 concerning Labor states that government institutions as well as the PPTKIS are not to charge any fees to workers directly or indirectly. Collecting charges from workers also violates Law No. 28/2009 concerning Local Taxes and Retribusi.

In June 2010, The SMERU Research Institute carried out a benchmarking study in Kabupaten Blitar, Kabupaten Ponorogo, Kabupaten Lombok Barat, and Kabupaten Lombok Tengah. These four kabupaten received the donor's support to proceed with the legal drafting of a protection perda. However, only Kabupaten Blitar (Perda No. 16/2008) and Kabupaten Lombok Barat (Perda No. 5/2008) managed to enact their protection perda.<sup>4</sup> Eventually, only Kabupaten Lombok Barat was able to establish a protection commission for migrant workers, which was inaugurated in late October 2010.

The study highlights that the local government is not that much aware of the development of the national legal framework. For example, the district agency for labor and transmigration (Disnakertrans) officers in the research areas are still using Decree of the Minister for Labor and Transmigration (Kepmenakertrans) No. KEP.104A/MEN/2002 as their main reference, and not Law No. 39/2004, let alone Government Regulation No. 38/2007. With this level of awareness, it is not surprising

<sup>3</sup> Retribusi is officially a user charge that is collected as payment in return for a service. However, on the ground, it includes other nontax charges collected by the government.

<sup>4</sup> Perda No. 16/2008 of Kabupaten Blitar is in the middle of the revision (see Bachtiar, 2011b for further information).



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if the local government is not ready to carry out the needed tasks.

The study also brings to light that the local government generally perceives the international migration to be the responsibility of the central government: with the BNP2TKI as the main operator for the G-to-G deployment and the PPTKIS for the P-to-P deployment. However, since most of the problems occur in the sending kabupaten/kota, the supervision of PPTKIS is crucial at the local level.

Unfortunately, Law No. 39/2004 is not clear with regards to this provision. First, it assigns the supervision to governments at all levels, including local government (Article 92 (1)) as well as BNP2TKI (A. 95). Meanwhile the delineation authority between governments at all levels on the one hand and BNP2TKI and Service Center on Placement and Protection of Indonesian Migrant Workers (BP3TKI) on the other hand is far from clear.<sup>5</sup> Moreover, this triggers the question of whether supervision fund is also shared with kabupaten/kota where BNP2TKI has no representative, except the small posts in 14 kabupaten. Second, the law promises to issue implementing legislation for supervision (A. 92 (2)) and a mechanism for supervisory report (A. 93). Seven years since the law was passed, the promise has yet to be fulfilled. Furthermore, an obstacle in supervising the PPTKIS also occurs because Article 23 of the law states

that the headquarters of the PPTKIS will bear the responsibility of all activities performed by its branch offices. In reality, the vast majority of PPTKIS operate their business from Jakarta and only some establish branches at the kabupaten/kota level. This provision makes it difficult for the local government to prosecute violating branch offices.

Last but certainly not least, the local government, in this case the Disnakertrans, lacks the sufficient budget to carry out responsibilities mandated by Law No. 39/2004 and Government Regulation No. 38/2007. The budget is too low to handle domestic employment issues, not to mention the overseas ones. Many officials from the research areas were worried about the budget implication of having a protection perda. In general local budget (APBD) is not flexible enough to fund additional tasks which fall beyond the regular budget of the Disnakertrans.

### III. Recommendations

Perda on retribusi that charge migrant workers should be annulled. Perda on retribusi that excessively charge the PPTKIS should also be reviewed, as the PPTKIS will eventually transfer the costs to the migrant workers. It is the responsibility of the local government to provide regular services to the workers free of charge as the reflection of its accountability to its citizens.

On the grounds that central government has been changing the policy and regulations very frequently, the migrant source kabupaten should be regularly updated with the most recent legal framework. It is certainly unrealistic to assume that the local government is automatically aware of the changes without proper socialization.



Kontan/Karel Agus W

<sup>5</sup> BP3TKI is the provincial representative office of BNP2TKI.



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Jl. Cikini Raya No. 10A  
Jakarta 10330 Indonesia  
Phone: 6221-3193 6336;  
Fax: 6221-3193 0850  
e-mail: smeru@smeru.or.id;  
website: www.smeru.or.id

At the same time, effective protection by the local government requires the revision of Law No. 39/2004. First, the revised law should clearly stipulate the supervision (Article 92) and supervisory mechanism (Article 93). Second, the authority of the local government in migrant workers' protection can only be enhanced if the Article 23 of the law is deleted. The branch office of the PPTKIS should be held responsible for any breach it commits and, hence, the local government can impose sanctions to it.

Furthermore, in relation to the principle of 'money follows function', the enormous tasks outlined by both Law No. 39/2004 and Government Regulation No. 38/2007 should consequently increase the budget allocated to migrant-source kabupaten. Protection funds are managed by the central government. So, if the local government helps improve the protection of migrant workers during the recruitment phase, it is more than justified if the central government adds financial support to the local government. This is particularly applicable in the case of a kabupaten with a protection perda.

Kabupaten Lombok Barat, with its protection commission which is considered as best practice, can serve as an interesting model. However, prior to further replication to other migrant source kabupaten, the model needs to be tested. The protection commission itself is an ad hoc body whose expertise in the long run has to be transferred to the Disnakertrans. In this regard, we recommend a pilot project supporting the protection commission by means of the Specific Allocation Fund (DAK) and or Deconcentration Fund (Dana Dekon). To start with, Kabupaten Lombok Barat can be the pilot area.

The rationale behind supporting the protection commission is clear. The energy, fund, and time invested in passing a protection perda would be such a waste if the protection commission, which is one of the mandates of the protection perda, cannot function well due to lack of financial resources from the Disnakertrans. Indeed, financial problems have been a concern for various stakeholders consulted during the fieldwork in the research areas, including Lombok Barat. It is public knowledge that the local budget allocated to the Disnakertrans is simply insufficient to cover its roles and responsibilities as mandated by Law

No. 39/2004 and Government Regulation No. 38/2007.

Finally, the migrant-source areas, through their migrant workers, have long paid US\$15/worker to the central government for the assistance and protection program. In return, the Ministry of Finance allocates the fund to eight institutions at the central level. This has been criticized to have reduced the effectiveness of the protection fund (DPR, 2010). It is only fair if this fund is channeled back to its origin, namely the migrant-source areas, to develop a sustainable protection mechanism and help reduce 80% of all the upstream problems. It is also only fair if the protection budget is shared along with the sharing of protection tasks between the central and kabupaten governments.

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Mailing address  
PO Box 8500  
Ottawa, ON, Canada K1G 3H9  
Phone: (+1) 613-236-6163  
Fax: (+1) 613-238-7230  
email: [info@idrc.ca](mailto:info@idrc.ca)  
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This policy note was written by Palmira Permata Bachtiar (The SMERU Research Institute)

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