



Global Code of Ethic for Tourism: The Challenges for Indonesian Tourism Workers in The Future

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Abstract— The rapid growth of the tourism industry impacts labor absorption, including foreign workers (TKA). However, the presence of TKA has the potential to displace local workers. For this reason, it is necessary to examine how global bias in protecting the rights of local labor takes the form of labor law policies, as well as the challenges and opportunities for local labor in the tourism sector in the future. This research aims to understand the protection of local workers' rights in the tourism sector and the opportunities and challenges for local workers in the future. This research method uses a legal normative approach. The research approach used by the author is the legislative approach and the conceptual approach. Hasil dari penelitian ini, first, the existence of GCET to regulate behavior and practices in the tourism industry globally can be concluded. This Code of Ethics promotes sustainable, responsible tourism that respects human rights, including workers' rights from local communities. Several articles in this code of ethics explicitly state the importance of tourism activities in respecting, protecting, and fulfilling workers' rights, especially those from local communities. Second, there are opportunities and challenges in the tourism sector, such as the opportunities in the tourism industry in Indonesia due to the increasing growth of tourism that aligns with economic growth and labor absorption, including foreign workers (TKA). However, this can also pose a challenge, as foreign workers can displace local workers (TKL). The discussion results show a need to strengthen regulatory policies regarding foreign and local labor in the tourism industry.

Keywords— Foreign Works; GCET; Local Labor, Tourism

I. INTRODUCTION

Fulfilling the right to work and a decent living for all people is fundamental to national development in Indonesia. The steps taken by the government to fulfill citizens' rights include striving to create and expand job opportunities to reduce the high unemployment rate and maximize workforce absorption.[1] However, there are still issues that hinder national development in Indonesia, particularly in the economic sector such as investment, employment, and the environment. One of the sectors that can support national development growth is the tourism sector. Tourism is an important sector that supports the country's economy, and each country competes to develop its tourism industry to attract tourists to enjoy all the tourism facilities provided by each country.

Based on data from the World Economic Forum in 2017, tourism accounts for about 10% of the world's income and employs nearly one-tenth of the global workforce.[2] The tourism industry plays a key role in creating new jobs for communities. It serves as a vehicle to restore and protect the earth's biological resources, as well as helping to build bridges between people and cultures. World Tourism Organization (WTO) formulated the Global Code of Ethics for Tourism, which emphasizes efforts to promote the development of sustainable and responsible tourism that can benefit the entire community. Tourism has become one of the industries that occupies an important position in improving community welfare and creating extensive job opportunities, therefore it needs to be equipped with appropriate, effective, and well-applicable laws and regulations.

The Declaration of ASEAN Concord II (Bali Concord II) declared in Bali describes that the ASEAN Community is a community that will have high competitiveness and can bring prosperity and continuity to its people through economic, socio-cultural, and security integration. Three communities form the pillars of the ASEAN Community, namely the ASEAN Economic Community, the ASEAN Socio-Cultural Community, and

the ASEAN Security Community. Among these three pillars of the ASEAN Community, the most prominent is the ASEAN Economic Community, due to the controversial debate regarding the impact of free trade that facilitates the flow of goods and services, investment, and professional labor.[3] Indonesia can only compete in two sectors, namely the construction sector and the tourism sector. In the tourism sector, Indonesian tourism workers must compete with workers from Singapore, Malaysia, and Brunei who have certification and periodic training as a legal effort to protect these workers in facing the IATA in 2015.

Currently, government policy designates tourism as the leading sector, with a target of 20 million foreign tourists and 260 trillion in foreign exchange earnings by the end of 2019. In line with that, in 2016 the number of foreign tourist visits to Indonesia was 11.51%, and in 2017 it reached 14.04 million visits, an increase of 21.88%. This increase in the number of visits has attracted investors to open business sectors in tourism while simultaneously creating new job opportunities. However, despite the rapid development of Indonesian tourism, the number of unemployed people has actually increased by 10,000. Foreign workers, also known as TKA, are a significant contributor to Indonesia's unemployment issue and are likely to enter the business sector, including tourism, in the global era.

The efforts made by the government to address the issue are by issuing legal products in the form of regulations containing solutions or obstacles through the formation of the Omnibus Law, namely the Job Creation Law. Following a material test, the government declared this law unconstitutional. In 2022, the DPR together with the government enacted Government Regulation in Lieu of Law (Perppu) Number 2 of 2022 concerning Job Creation, which was then established as Law Number 6 of 2023 concerning the enactment of Government Regulation in Lieu of Law Number 2 of 2022 concerning Job Creation into law. However, the emergence of this law has sparked various forms of opposition both in terms of substance and the technique of its formation, which are considered detrimental to citizens' rights, threaten the continuity of life, and cause negative impacts.

The employment cluster, one of the substantive clusters in the Job Creation Law, has faced significant opposition. This is because the cluster clearly demonstrates how strong the economic approach used.[4] The Economic Analysis of Law theory asserts that the evaluation of a country's legal quality hinges on its capacity to attain efficiency.[5] This implies that the evaluation of the law does not hinge on its capacity to yield social benefits to society, but rather on its ability to generate a shift in protection that encourages the adoption of a risk-based approach. This approach is deemed counterproductive to the protection of labour law, which should serve as the primary focus of the Omnibus law on the employment cluster of the Job Creation Law.[4] Meanwhile, the aspect of legal protection in labour law contains a permanent labour law policy that refers to the values of Pancasila, the 1945 Constitution of the Republic of Indonesia, and customary law that has existed since the early days of independence.[6]

Realizing the importance of tourism, almost all governments are taking innovative steps to encourage inclusive, competitive, and long-term tourism growth. The integrated perspective of the entire government towards tourism is seen as an important element of the success of government structures in many countries.[7] These integrated measures encourage policy consistency and the effectiveness of private and/or government tourism programs.[8] One of the breakthroughs made by the government to achieve equitable economic development acceleration is through the development of Special Economic Zones (SEZ) in various regions of Indonesia. These regions are designated by the government based on proposals from business entities and regional governments. By establishing Special Economic Zones (SEZ) in tourist areas, the government can provide incentives to investors to develop tourism infrastructure, such as hotels, restaurants, and other supporting facilities. This can increase tourist visits, which in turn will have a positive impact on the local economy.

Although SEZ can create new jobs, there is still uncertainty in working conditions. Some companies may prefer flexible contracts or outsourcing to reduce labor costs, which could potentially disadvantage workers with fewer guaranteed rights. SEZ's impact on the workforce also presents several challenges and considerations. SEZs can cause job shifts from traditional sectors to modern sectors, affecting workers in non-SEZ sectors. Furthermore, there are concerns that increased foreign investment may lead to labour exploitation if not properly regulated. SEZ can operate synergistically with the Job Creation Law in the context of employment. SEZs can take advantage of the law's regulatory flexibility to more easily adapt to market and investment needs. Make sure this flexibility doesn't violate workers' rights. The SEZ has significant potential to positively impact the Indonesian workforce by creating jobs and increasing investment. However, the Job Creation Law's changes to labor regulations necessitate careful management of this impact. It is important for the government and stakeholders to ensure that the workforce continues to have adequate protection and rights, while promoting sustainable economic growth.

Based on the aforementioned exposition, it is critical to explore potential solutions for the future protection of tourism workers. This can be achieved by examining national and international legal provisions related to the establishment of Special Economic Zones (SEZ) in the regulation of the Job Creation Law, with the aim of accelerating economic development through the tourism investment sector. Based on this, it is necessary to conduct a study on the opportunities and challenges that tourism workers will face in the future as they navigate employment issues.

II. LITERATURE REVIEW

A. *Global Code of Ethics for Tourism*

The Global Code of Ethics for Tourism (GCET) is the sectorial reference tool in sustainable and value-based management for tourism stakeholders. GCET was adopted by the World Tourism Organisation (WTO) in 1999 as ethical management for sustainable development and then endorsed by the United Nations in 2001. Since then, many organisations in this sector have implemented it. As a result, GCET serves as a reference in the management of value-oriented tourism stakeholders. In addition, the United Nations General Assembly recently urged the WTO to continue promoting and disseminating GCET and monitoring its implementation as a way to respond to the Sustainable Development Goals (SDGs) of the 2030 Agenda. The code of ethics is thus considered a management tool that supports the contribution of tourism organisations to sustainability.[9]

The Code's 10 Articles (see UNWTO, Citation 1999, for these Articles) cover a wide range of issues pertaining to individual rights and freedoms, as well as the sociocultural, economic, and environmental impacts that are so familiar to tourism students and scholars. For example, Section 1 of Article 7 entitles tourists to "direct and personal access to the discovery and enjoyment of the planet's resources," also proclaimed as a right of all the planet's human inhabitants. Open access to the world's attractions, free from discrimination, complements this right to travel. Article 2, Section 3 states that exploitation of people, whether children, women, or men, is in conflict with the fundamental aims of tourism. Section 2 of Article 1 on mutual understanding and respect between peoples and societies states that "tourism activities should be conducted in harmony with the attributes and traditions of the host regions and countries and in respect for their laws, practices, and customs." Section 1 of Article 5 on the benefits of tourism to host regions suggests that "local populations should be associated with tourism activities and share equitably in the economic, social, and cultural benefits they generate, and particularly in the creation of direct and indirect jobs resulting from them." [10]

B. *Foreign Workers in Indonesia*

In some fields of work, there is a need for professional workers that a country cannot meet. Thus, opportunities are opened for foreign workers to fill certain positions. To be able to work in a country, foreign workers must meet several criteria and requirements to be issued a work permit. However, Indonesia continues to face various obstacles in regulating the supply of foreign workers, particularly in terms of technical rules and regional regulations that govern the licensing of these workers.[11] According to data from the Ministry of Manpower, the number of foreign workers (TKA) caught violating regulations reached 1,521 workers throughout 2018. his number increased by 290% from the previous year, which had only 390 workers. Cases of violations by foreign workers in Indonesia are as follows: (1). Working in Indonesia without an International Manpower Utilization Permit for Foreign Workers (IMTA), which reached 1,237 workers and is the highest compared to other cases; (2). The second largest case of foreign labour violations is abuse of authority.[12]

Foreign workers can be interpreted as a series of efforts to increase investment, transfer of technology and transfer skills to TKI, as well as expand job opportunities to accelerate economic growth by attracting investors to invest in Indonesia. However, it is necessary to guarantee the basic rights of workers / labor and guarantee equal opportunity and treatment without discrimination on any basis to realize the welfare of workers / laborers and their families while still paying attention to the laws and regulations that complement the smooth use of foreign workers and labor local work and considering the progress of the business world.[13]

III. METHOD

The normative legal research methodology is used in the research. In this research, the sources of secondary legal materials that will be utilized include various types, such as scientific publications, research results, and literature relevant to The Global Code of Ethics for Tourism (GCET) and Indonesia Tourism Workers.[14] The research approach used by the author is the legislative approach and the conceptual approach. The legal materials used in the research are primary legal materials, which are legal materials that have binding legal force such as laws and regulations and secondary legal materials such as books, journals, scientific works that are relevant to the problems being studied.

IV. RESULTS AND DISCUSSION

A. *Global Code of Ethics for Tourism: Commitment to The Rights of Local Community Workers*

The World Tourism Organisation, also known as the United Nations World Tourism Organisation (UNWTO), developed the Global Code of Ethics for Tourism (GCET) as an initiative to regulate behaviour and practices in the tourism industry globally, as previously mentioned. This Code of Ethics aims to promote sustainable, responsible tourism that respects human rights, including the rights of workers from local

communities. There are several articles in this code of ethics that explicitly state the importance of tourism activities in respecting, protecting, and fulfilling the rights of workers, especially those from local communities.

Article 2.2 of the GCET explicitly states that tourism activities should respect equality between men and women; promote human rights, particularly the rights of individuals from the most vulnerable groups. For example: children, the elderly, people with disabilities, minorities, and indigenous communities. Article 5.1 of the GCET then firmly states that local communities should be involved in tourism activities and receive a fair share of the economic, social, and cultural benefits generated by tourism activities in their area, especially in creating job opportunities. The GCET then states in Article 5.2 that we should implement tourism policies to enhance the living standards of residents in tourism destination areas. Local workers with sufficient skills should also receive priority.

Article 9.5 GCET then discusses the issue of multinational tourism companies' presence. Multinational tourism companies must fundamentally refrain from exploiting their dominant position and imposing cultural and social influence that contradicts the spirit and identity of the local community. They must also avoid excessive profit repatriation or overly large imports. In principle, there must be a concrete contribution to the economic life of the local community. Besides GCET, the Charter of Sustainable Tourism 1995 also touches on the commitment to the existence of workers from local communities. This charter is essentially a statement of commitment or a written agreement adopted by stakeholders in the tourism industry, such as the government, tourism companies, non-governmental organizations, and local communities, to develop and implement sustainable tourism practices. The purpose of this charter is to create a shared direction and framework in efforts to preserve the natural environment, promote social justice, and support sustainable economic growth in the tourism industry. Principle Number 3 asserts that tourism must consider its influence on cultural heritage, traditional elements, activities, and the dynamics of each local community. Recognizing these local factors and supporting the identity, culture, and interests of local communities must always play a central role in formulating tourism strategies, especially in developing countries. When participating in sustainable development, according to Principle Number 7, tourism must be based on the diversity of opportunities offered by the local economy. To positively contribute to local economic development, every tourism policy should fully integrate this principle.

B. Indonesian Labor Law Policy in The Dimension of Tourism

The development of tourism in Indonesia actually requires Foreign Workers (TKA) as a means of knowledge transfer. Indonesia's membership in the WTO has consequences and opens opportunities for foreign workers to work in Indonesia's service sector. Indonesia must harmonise its legal policies in international trade with WTO provisions and all accompany annexes and appendices upon WTO ratification. Annex 1B of the WTO, also known as the General Agreement on Trade in Services (GATS), includes international trade regulations. This policy aims to develop a multilateral framework with non-discrimination principles as part of the implementation of human rights. Hans Kelsen's theory of the hierarchy of norms, which asserts the tiering and layering of legal norms within a hierarchy, ensures they do not clash with each other. The GATS non-discrimination principle is an international law that, in principle, must comply with fundamental norms according to the hierarchy of legislation in Indonesia.

The Labour Law has harmonised the regulation of the non-discrimination principle. In its consideration section letter d, it explicitly and clearly states that labour protection aims to guarantee basic rights, equal opportunities, and treatment without discrimination on any basis, with the ultimate goal of ensuring the welfare of workers and their families. However, Article 2 of Law Number 13 of 2003 (Labour Law) on Employment essentially stipulates that the development of employment is grounded in Pancasila and the 1945 Constitution of the Republic of Indonesia. This implies that, as a sovereign state, the 1945 Constitution holds the highest authority in the hierarchy. Therefore, the regulation of Indonesia's employment policies must be in accordance with the 1945 Constitution.[15]

Chapter VIII of the Labour Law specifically addresses the use of foreign workers (TKA), stating in Article 42 paragraph (1) that any employer hiring TKA must obtain written consent from the minister or a designated official. Article 42 paragraph (4) of the Labour Law stipulates that foreign workers (TKA) who can work in Indonesia are only in an employment relationship for specific positions and periods; furthermore, Article 42 paragraph (6) emphasizes that if the foreign worker's employment period is over, it cannot be extended and replaced by another foreign worker. In addition, Indonesia cannot employ foreign workers for positions that handle personnel matters in accordance with the provisions of Article 46, paragraph (1) of the Labour Law.[15]

Article 4 of Law Number 10 of 2009 on Tourism (Tourism Law) underscores that the primary goal of tourism is to enhance the well-being of the populace, and it operates under the principle of empowering local

communities. The people and local communities mentioned in the tourism law are undoubtedly Indonesian citizens. The Tourism Law also establishes specific employment regulations. Article 53 of the Tourism Law stipulates that workers in the tourism sector must meet competency standards through competency certification by professional certification bodies that have obtained licenses in accordance with legal provisions, including foreign workers.

Article 56 of the Tourism Law states that foreign workers who can work in the Indonesian tourism industry are only skilled foreign workers who have received recommendations from professional tourism worker organizations. When granting work permits to foreign workers, the government also considers the state and development of the labour market, as well as national appreciation for occupying important positions in all layers of society. This is important to ensure job opportunities for Indonesian citizens, although it is not yet fully in line with the principle of non-discrimination.[16] Furthermore, according to Article 10 paragraph 2 of Law Number 25 of 2007 concerning Investment, each company, whether foreign or domestic, is entitled to employ foreign experts for certain positions and expertise in accordance with the legislation. Article 10, paragraph 4 mandates that companies hiring foreign workers must provide training and technology transfer to Indonesian citizens.[16]

Discrimination against labor in any form is fundamentally contrary to GATS's non-discrimination principle, but there are exceptions for developing and least developed countries. The agreement outlines the principle of progressive liberalization or gradual liberalization.[17] In reality, Indonesia has imposed restrictions in the Schedule of Specific Commitment (SOC) on certain positions suitable for foreign workers (TKA). Mahmud Sinegar stated that the specific restrictions on TKA in the service sector, based on Indonesian positive law, are still permissible.[17] The WTO regulates special and differential treatment for developing countries to facilitate their quicker integration into the global trading system and promote economic development, including Indonesia as a sovereign developing country.[18]

In line with the principle of special and differential treatment, the WTO has placed the sovereignty of its member states as the main principle of the institutional system and the legal system for implementing the non-discrimination principle of GATS. Therefore, Indonesia possesses the authority to decide the degree of implementation of the GATS non-discrimination principle. The principle of state sovereignty, which is the main principle in the WTO, means that Indonesia, as a sovereign state, has the highest authority. As a GATS participant, Indonesia has the fundamental right to determine its own economic system, a right that other countries cannot impose.[19]

C. Opportunities And Challenges for Tourism Workers in The Future

Industrial relations are a system of relationships formed between the actors in the process of producing goods and services, consisting of elements of workers, employers, and the government. Industrial relations in Indonesia are fundamentally based on the values of Pancasila and the 1945 Constitution of the Republic of Indonesia. Industrial relations are established to provide legal protection to workers and realize the welfare of all Indonesian people based on the law. The concept of the welfare state is a fundamental goal of the state, aiming to improve the welfare of its people. This goal is achieved by using state power to control the administration and political direction of the state, thereby modifying conditions for the social welfare and economic prosperity of society through economic development efforts.[6] Welfare, in this context, is a condition, process, and right that must be fulfilled to achieve peace, tranquility, and happiness both physically and spiritually. Therefore, the concept of welfare must serve as a guiding principle in formulating important provisions in labor law. It is through this lens that labor laws can become a means of development for the welfare of all workers and the society at large.

According to Roscoe Pound, law as a tool of social engineering means that law is a tool that can change the social conditions of society, including its welfare.[20] Pound argues that the law must balance all societal interests, a diverse society with many different perspectives in responding to a matter within the law. Legal reform must consider the interests of workers/laborers. Labor law reform through the Job Creation Law must prioritize workers/laborers, not the other way around as is happening now, which is still far from decent in their lives. On that basis, it is essential to create progressive legal breakthroughs to develop the legal system in Indonesia. Meanwhile, according to Satjipto Raharjo, progressive law must be evident in the legal system, law enforcement, and the judiciary, meaning that progressive law is a law that can keep up with the times, respond to and change the times with all its foundations, and serve society by considering the aspects and morality of its human resources.

Establishing the ASEAN Economic Community (AEC) necessitates that Indonesia enhance its capabilities to compete with other ASEAN countries in the service, trade, and labor sectors. The AEC presents unique

challenges for Indonesia, particularly in the labor sector. The AEC's formation, coupled with the influx of foreign workers (TKA), has become an unavoidable necessity and challenge for Indonesia. The presence of foreign workers is crucial as Indonesia still requires foreign expertise to develop its human resources in various economic sectors. While laws such as Number 13 of 2003 on Manpower, Number 6 of 2023 on Job Creation, and Government Regulation Number 34 of 2021 on the Use of Foreign Workers regulate the duration of work positions for foreign workers, they do not specify the types of jobs permitted for foreign workers.

The most sought-after positions for foreign workers (TKA) are as professionals. This cannot be separated from the development of the times and technology, where many foreign companies employ TKA as professional staff to develop their companies with the professional assistance of TKA, who possess extensive experience and competency certifications. Further regulations related to technology and knowledge transfer are stipulated in Article 7, paragraph 1 of Government Regulation No. 34 of 2021 concerning the Use of Foreign Workers, which explains that the Foreign Worker Companion is an Indonesian worker employed by the Foreign Worker Employer who is trained as a companion to the Foreign Worker by the qualifications of the position held by the Foreign Worker. In line with the implementation of technology transfer through Foreign Workers, the Foreign Worker Employer is also required to provide education and job training for the Foreign Worker Companion. The companionship of Foreign Workers is concentrated on knowledge transfer to provide the skills needed by the Foreign Worker, who will ultimately occupy the position of the Foreign Worker they are accompanying.[21]

Unfortunately, the implementation of this technology transfer did not go smoothly and encountered various obstacles in its execution, making the opportunity for Indonesian workers to compete with foreign workers tiny due to the limitations in the skill level of Indonesian workers, work ethic, and discipline, as well as Indonesia's geographical condition as a developing country with still limited facilities and technology, causing the technology transfer process not to proceed according to the mandate stipulated in the Law. The negative impact of the WTO on the regulation of tourism business law in Indonesia can be seen from[22], (i) Implemented liberalization is a guise modern countries use to freely carry out their imperialist missions. (ii) Masyarakat lokal akan kalah saing; (iii) Dalam konsep GATS, prinsip MFN (Most Favoures Nation) tidak berlaku otomatis; (iv) Perbedaan sistem hukum dan sistem peradilan; (v) GATS kurang memperhatikan kepentingan negara berkembang.

Based on the exposition above, the essence of regulating tourism activities in Indonesia is driven by the pressures of economic globalization, which encourages Indonesia to harmonize international legal policies and eliminate various obstacles that hinder tourism development. By developing a global economy that opens access to the tourism sector, it is hoped that there will be an increase in national economic growth to realize the community's welfare as mandated by the 1945 Constitution of the Republic of Indonesia. To provide excellent service to tourists, tourism development needs to be supported by competent human resources. Law Number 10 of 2009 on Tourism mandates that workers in the tourism sector must possess competency standards through certification. Certification is essential in facing competition from both national and international levels. One of the problems currently faced in the tourism sector is the relatively low absorption of local labor from the indigenous population. This is due to the low competitiveness and productivity of the workforce in Indonesia.

Technical regulations related to the absorption of labor from the local community of the tourism area, including indigenous residents, are an obligation for every business operator to manage tourism businesses. However, such regulations are not found in the laws related to tourism business management, either at the national or regional level. This regulatory gap results in the absence of sanctions and explicit provisions regarding the proportion of local labor that must be absorbed in managing tourism services. Human resources, especially labor in the management of tourism services, are one of the most critical components to improve a product's quality. The quality of human resources determines the quality of the tourism product. One of the procedures that must be carried out is the absorption of labor that is indeed competent in the field of tourism.[23]

To realize legal order in employing foreign labor in regional development and to improve the quality of local labor. For that reason, capital owners as entrepreneurs need to bring in some workers from their home country or other countries to work as Foreign Workers (TKA), thus requiring regulations that govern foreign workers, from labor regulations to prevent the entry of illegal foreign workers that could harm the local economy and reduce job opportunities for local workers. Therefore, the Indonesian Government's obligation is to supervise programs to increase the productivity of local labor and regional income. The Government does Government blind Governmente open climate of the free market economy; as a precautionary measure, it is responsible for issuing regulations that, on the one hand, protect Indonesian labor and, on the other hand, foreign labor.

The policy of absorbing local labor serves as a reference for legal drafters at the regional government level to not only regulate the placement of local labor but also to regulate training, education, and the placement of labor

internships. The hope for the future is that workers in the tourism sector can receive justice and welfare for their normative rights guaranteed by law. To achieve this, amendments to the Job Creation Law, particularly in the employment cluster, are necessary by reorganizing fundamental aspects of the welfare state concept, which involves restoring and strengthening the Government's role as one of the Government's industrial relations as a regulator and supervisor by repositioning its status, thereby granting equal standing to both workers and employers, both juridically and sociologically.

V. CONCLUSION

Based on the discussion above, *first*, the existence of GCET to regulate behavior and practices in the tourism industry globally can be concluded. This Code of Ethics promotes sustainable, responsible tourism that respects human rights, including workers' rights from local communities. Several articles in this code of ethics explicitly state the importance of tourism activities in respecting, protecting, and fulfilling workers' rights, especially those from local communities. Second, there are opportunities and challenges in the tourism sector, such as the opportunities in the tourism industry in Indonesia due to the increasing growth of tourism that aligns with economic growth and labor absorption, including foreign workers (TKA). However, this can also pose a challenge, as foreign workers can displace local workers (TKL).

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