

The Ship Must Cast Off: Indonesia's Perspective And Contribution On The New Biodiversity Agreement

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Abstract

"The ship has reached the shore" was Rena Lee's remarkable statement as it symbolized the adoption of the new agreement on biodiversity beyond national jurisdiction (BBNJ Agreement) in the first quarter of 2023. Immediate action to deal with biodiversity loss while at the same time synchronizing States' interests (developed v. developing) regarding certain activities in area beyond national jurisdiction (ABNJ) were the tough challenges during the process. Indonesia has been participating actively in the development of international law of the sea, including the BBNJ Agreement. By using normative legal research, this article explores the perspective and contribution of Indonesia on the protection of biodiversity in ABNJ, as well as the next steps the Government of Indonesia (GoI) should take. The result shows that Indonesia has always been a persistent contributor to the law of the sea, including the BBNJ Agreement. Also, Indonesia must commence some preparations such as synchronizing national laws, strengthening cooperation and finally ratify the Agreement.

Keywords: *International law of the sea; the BBNJ Agreement; Indonesia's Perspective*

Abstrak

Perjanjian baru mengenai perlindungan keanekaragaman hayati di luar wilayah yurisdiksi nasional (Perjanjian BBNJ) berhasil diadopsi pada kuartal pertama tahun 2023 dan disimbolkan dengan metafora "the ship has reached the shore". Aksi nyata untuk mengatasi penurunan keanekaragaman hayati sekaligus menyinkronkan kepentingan negara maju dan negara berkembang merupakan tantangan yang sulit selama proses pembentukan Perjanjian BBNJ. Indonesia merupakan negara yang selalu aktif berkontribusi di dalam pembentukan hukum laut, termasuk di dalam Perjanjian BBNJ. Dengan menggunakan penelitian hukum normatif, artikel ini mengeksplor perspektif dan kontribusi Indonesia dalam perlindungan keanekaragaman hayati di luar wilayah yurisdiksi nasional (ABNJ) sekaligus langkah yang harus dipersiapkan oleh pemerintah Indonesia selanjutnya. Hasil menunjukkan bahwa Indonesia menjadi kontributor tetap dalam perkembangan hukum laut, termasuk Perjanjian BBNJ. Namun, pemerintah Indonesia harus membenahi beberapa hal seperti penyesuaian hukum nasional, memperkuat kerja sama internasional dan langkah terakhir adalah meratifikasi Perjanjian BBNJ dengan pertimbangan yang hati-hati.

Kata kunci: *Hukum Laut Internasional, Perjanjian BBNJ, Perspektif Indonesia*

Introduction

As the largest part of the Earth's composition, ocean bears a great number of problems. The Earth's oceans are divided into 64 large marine ecosystems (LME)² but the majority of LMEs are now severely impacted by human activities and technological advances *e.g.* marine debris/pollutions, unsustainable fishing practices and also ocean acidification (climate change).³ The same issues occur in area beyond national jurisdiction

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²LMEs are large areas of ocean space, generally located in exclusive economic zone and continental shelf, which have high productivity. For LMEs' map, visit https://celebrating200years.noaa.gov/breakthroughs/ecosystems/lme_map.jpg. See also Zhaohu Zhang, Fangyuan Qu and Shouqiang Wang, "Sustainable development of the Yellow Sea Large Marine Ecosystem", *Deep Sea Research Part II: Topical Studies in Oceanography*, vol. 163, (2019: 102-107), p. 102.

³ "The Large Marine Ecosystem Approach: An Engine for Achieving SDG 14," 2017, 3-5, https://www.undp.org/sites/g/files/zskgke326/files/publications/Large_Marine_Ecosystem_Approach_22062017.pdf.

(ABNJ) where demands for resources are high; weak governance of the ABNJ; and loss of biodiversity due to cumulative impacts such as climate change.⁴

The loss of marine biodiversity in ABNJ is inevitable and thus sustainable and comprehensive governance over ABNJ are highly needed. In the end of 2004, the United Nations General Assembly (UNGA) adopted a Resolution 59/24 “oceans and the law of the sea” that addressed multiple ocean issues. One of the mandates of Resolution 59/24 decided “to establish an Ad Hoc Open-ended Informal Working Group (the Working Group) to study issues relating to the conservation and sustainable use of marine biological diversity beyond areas of national jurisdiction”.⁵ The Working Group was held in three sessions during 2014-2015 and it recommended the General Assembly to establish Preparatory Committee before developing an internationally legally binding instrument for the protection of marine biodiversity in ABNJ (the BBNJ Agreement).⁶ Finally, the UNGA commenced the BBNJ Conference through its Resolution 72/249 of 24 December 2017.⁷

The Conference was held in five sessions and could have done earlier before 2023, but it was postponed during the Covid-19 pandemic.⁸ The first session was conducted in 2018 (4-17 September); the second and third sessions were in 2019 (25 March-5 April and 19-30 August); the fourth and fifth were in 2022 (7-18 March and 15-26 August). The fifth session was suspended and continued in 20 February-3 March and 19-20 June 2023. The BBNJ Agreement was successfully adopted on 19 June 2023 and the Conference was closed the day after.

The processes were not easy as the governance of the ABNJ is indeed complicated in its very nature: the geographical scope, the potential resources and distinct interests of States over it. In regards with the latter for instance, developed States maintained its stance for free access and exploitation (freedom of the high seas, FHS) of marine genetic resources (MGRs) in ABNJ. Meanwhile, developing States, demanded sharing of benefits (common heritage of mankind, CHM) from the exploitation of MGRs due to lack of technology.⁹ Another example is about the obligation to conduct a transparent environmental impact assessment (EIA). Developed States demanded the states-centered regime concerning the public notification of the EIA, meanwhile, developing States asked for a more internationalized procedure.¹⁰

⁴ Jingchang Li and Wangwang Xing, “A Critical Appraisal of the BBNJ Agreement Not to Recognise the High Seas Decline as a Common Concern of Humankind,” *Marine Policy* 163 (May 2024): 1, <https://doi.org/10.1016/j.marpol.2024.106131>.

⁵ UNGA Resolution 59/24, <https://documents.un.org/doc/undoc/gen/n04/477/64/pdf/n0447764.pdf>, accessed 11 September 2024.

⁶ A/69/780 Letter from Co-Chairs of the Ad Hoc Open-ended Informal Working Group to the President of the General Assembly, <https://documents.un.org/doc/undoc/gen/n15/041/82/pdf/n1504182.pdf>, accessed 11 September 2024.

⁷ UNGA Resolution 72/249, <https://documents.un.org/doc/undoc/gen/n17/468/77/pdf/n1746877.pdf>, accessed 11 September 2024.

⁸ United Nations, “Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction |,” accessed September 18, 2024, <https://www.un.org/bbnj/>.

⁹ Pascale Ricard, “The Advent of the 2023 ‘BBNJ’ Agreement: A Preliminary Legal Analysis,” *Environmental Policy and Law*, 2023, 3, <https://doi.org/10.3233/EPL-239014>.

¹⁰ Ibid.

Indonesia is one of the developing States that has been proactive in the development of international law of the sea. As the State with 13,558 islands,¹¹ Indonesia fought hard during the law of the sea conference in Geneva (LOSC) so the concept of 'Archipelagic State' could be accepted under the realm of law of the sea (UNCLOS). Djuanda Declaration (1957) stipulates that the waters amongst the islands of Indonesia are integrated each other and thus the territorial sea is measured from the outer points of Indonesia's islands.¹² The Archipelagic State concept failed to be acknowledged in LOSC I-II but eventually did so in LOSC III which resulted the UNCLOS. To reach that point,¹³ Indonesia used its power of diplomacy to get support, especially from neighbouring States such as Singapore and Malaysia also from big companies from maritime power States.¹⁴

Besides having a large number of islands, Indonesia is also the 2nd megabiodiversity State after Brazil.¹⁵ Not only does Indonesia possess the richness of coastal biodiversity but also the terrestrial.¹⁶ Indonesia is Party to Convention on Biological Diversity (CBD) as one of its efforts to protect local and global ecosystems. Furthermore, Indonesia's participation in the negotiation of the BBNJ Agreement shows that it cares not only for biodiversity within its national jurisdiction but also in ABNJ.

The BBNJ Agreement serves as a contemporary international law instrument dealing with the triple planetary crisis. This article explores the Indonesia's perspective and contribution on the new biodiversity agreement also figures what should be done by the government of Indonesia (the GoI) immediately to make its participation effective.

Research questions

According to background's elaboration, this article answers the following research questions:

- 1) How are the perspective and contribution of Indonesia on the BBNJ Agreement?
- 2) How should the GoI maximize its participation in the Agreement to maintain its national and global interests?

Research method

¹¹ Generally, the total islands of the Republic of Indonesia is often referred around more than seventeen thousands. However, the exact number that qualified as islands is 13,558 (minimum size about 900m²). See Serge Andréfouët, Mégane Paul, and A. Riza Farhan, "Indonesia's 13558 Islands: A New Census from Space and a First Step towards a One Map for Small Islands Policy," *Marine Policy* 135 (January 2022): 3, <https://doi.org/10.1016/j.marpol.2021.104848>.

¹² Tommy Hendra Purwaka, "Tinjauan Hukum Laut Terhadap Wilayah Negara Kesatuan Republik Indonesia," *Mimbar Hukum - Fakultas Hukum Universitas Gadjah Mada* 26, no. 3 (February 8, 2015): 357, <https://doi.org/10.22146/jmh.16024>.

¹³ The concept of Archipelagic State is finally recognized in Part IV of UNCLOS.

¹⁴ Purwaka, "Tinjauan Hukum Laut Terhadap Wilayah Negara Kesatuan Republik Indonesia," 359.

¹⁵ Joko Mijiarto, Harnios Arief, and Intan Purnamasari, "The Roles of High Conservation Value Area to Support Biodiversity Conservation in Indonesia," *IOP Conference Series: Earth and Environmental Science* 1243, no. 1 (September 1, 2023): 1, <https://doi.org/10.1088/1755-1315/1243/1/012002>.

¹⁶ Suyadi et al., "Biodiversity in the Coastal Ecosystems of Small Islands and Its Conservation Status," *IOP Conference Series: Earth and Environmental Science* 762, no. 1 (May 1, 2021): 1, <https://doi.org/10.1088/1755-1315/762/1/012024>.

This article uses normative legal research in answering the proposed research questions. The author uses primary, secondary and tertiary sources that respectively cover legal instruments (mainly the BBNJ Agreement and other supportive instrument such as UNCLOS and VCLT); journal articles that study about the protection of BBNJ in general and Indonesia's stance in particular; and online sources such as the UN official websites, NGOs, and government websites. The author then discusses the result using deductive method, from general topic: explained Indonesia's perspectives and contribution, to the narrower one: next steps the GoI should take.

Result and discussion

Indonesia's Perspective

Indonesia possesses three titles before the international community *i.e.* developing, megabiodiversity and archipelagic state. Each of them plays important role in constructing the stance of Indonesia on the BBNJ Agreement.

Firstly, the rule in categorizing States into 'developed' or 'developing' is indeed very complex and subjective. The categorization appeared in economic writings during the intra-war period in the 1940s and then was followed up by self-identification method.¹⁷ It means that since the beginning, the idea of 'developed' and 'developing' state is about the power of economy, although nowadays it varies. For instances, International Organizations (IOs) play pivotal keys in giving the labels and the rest are depend on treaties, foreign policies also from academics.¹⁸ Unlike China which its status as developing state is being challenged by international society,¹⁹ Indonesia's is free from contestation.²⁰

Even though Indonesia is now still classified as a developing state, its economy is growing and in the period of 2024-2026, Indonesia's GDP is projected 4.9 percent higher than today according to World Bank Report.²¹ One of the Indonesia's sources of economy comes from maritime sector. However, in terms of technology for the ocean matters, Indonesia lacks and needs evaluation also improvement²² (including its human resources as they the one operating). For instance, saildrone (figure 1) is a marine technology serves multiple purposes such as monitoring sustainable fisheries, detecting oil spills and ocean's acidity due to climate change.²³ Having this

Figure 1

¹⁷ Deborah Barros Leal Farias, "Unpacking the 'Developing' Country Classification: Origins and Hierarchies," *Review of International Political Economy* 31, no. 2 (March 3, 2024): 654, <https://doi.org/10.1080/09692290.2023.2246975>.

¹⁸ *Ibid.*, 655.

¹⁹ Clara Weinhardt and Johannes Petry, "Contesting China's Developing Country Status: Geoeconomics and the Public-Private Divide in Global Economic Governance," *The Chinese Journal of International Politics* 17, no. 1 (March 7, 2024): 48–74, <https://doi.org/10.1093/cjip/poae004>.

²⁰ "World Economic Outlook Database - Groups and Aggregates," IMF, accessed September 27, 2024, <https://www.imf.org/en/Publications/WEO/weo-database/2023/April/groups-and-aggregates>.

²¹ "Overview: Indonesia in World Bank," Text/HTML, World Bank, accessed September 27, 2024, <https://www.worldbank.org/en/country/indonesia/overview>.

²² Aris Sarjito, "The Role of Technology in Indonesia's Maritime Development," *Jurnal Lemhannas RI* 11, no. 4 (2023): 222–23.

²³ National Oceanic and Atmospheric Administration, "These 5 Technologies Are Helping Save Our Ocean," accessed September 28, 2024, <https://www.noaa.gov/stories/these-5-technologies-are-helping-save-our-ocean>.

saildrone spreaded on all Indonesian waters would be beneficial, sadly that is not the reality yet.

By participating actively in the BBNJ Agreement, Indonesia would have the chances to improve its marine technologies and human resources. One of the essential elements within the Agreement is capacity building and the transfer of marine technology (CBTMT). As a developing state, Indonesia has a special position in the CBTMT program as some of its objectives are to assist Parties through the development of marine scientific and technological capacity and “increase, disseminate and share knowledge on the conservation and sustainable use of marine biological diversity” of ABNJ.²⁴ Art. 44 of the Agreement further elaborates that one of the types of CBTMT is “the development and strengthening of relevant infrastructure, including equipment and capacity of personnel for its use and maintenance”.²⁵



Secondly, it is better to understand Indonesia's megabiodiversity and archipelagic waters altogether because the two complement each other. Similar to the threshold of developed-developing categorization, biodiversity's measurement is not well uniform either.²⁶ Nevertheless, Indonesia's nearly-seventeen thousands islands along with the biogeographic, geological, and ecological factors are the reasons behind its megadiverse fauna and flora both marine and terrestrial.²⁷ According to CBD Secretariat, Indonesia possesses 25,000 flowering species which 55% of them are endemic; 12% of the world's marine mammals (515 species); and 17% of the world's birds (1,592 species).²⁸

Geographically, Indonesia is bordered by Pacific and Indian Oceans, that means its waters are adjacent to two high seas (also its subsoil, *the Area*). The rapid development of technology not only intensifies the activities in the high seas (column water) but also in the Area. Activities in these two locations, either lawful or unlawful, certainly have impacts to the vicinity. That being said, if certain activities were conducted in the high seas or the Area that adjacent to Indonesian waters *i.e.* exclusive economic zone (EEZ) and continental shelf, practically that would put Indonesia's marine environment at stake.

The BBNJ Agreement is a specific instrument for activities in ABNJ that contains regulations on EIA. Not only is it the key for protection of marine biodiversity in ABNJ but also for coastal states' marine environment like Indonesia that adjacent to the ABNJ.

²⁴ “Agreement under the United Nations Convention on the Law of the Sea on the Conservation and Sustainable Use of Marine Biological Diversity of Areas beyond National Jurisdiction” (2023), art. 40. [BBNJ Agreement]

²⁵ BBNJ Agreement, art. 44 (c).

²⁶ George Emm. Halkos and Nickolaos G. Tzeremes, “Measuring Biodiversity Performance: A Conditional Efficiency Measurement Approach,” *Environmental Modelling & Software* 25, no. 12 (December 1, 2010): 1866–73, <https://doi.org/10.1016/j.envsoft.2010.04.014>.

²⁷ Kristina von Rintelen, Evy Arida, and Christoph Häuser, “A Review of Biodiversity-Related Issues and Challenges in Megadiverse Indonesia and Other Southeast Asian Countries,” *Research Ideas and Outcomes* 3 (September 11, 2017): 3, <https://doi.org/10.3897/rio.3.e20860>.

²⁸ Secretariat of the Convention on Biological Diversity, “Indonesia's Biodiversity Facts,” accessed September 29, 2024, <https://www.cbd.int/countries/profile?country=id>.

Besides EIA, the Agreement regulates access and benefit sharing of MGRs. Indonesia has potentials in bioprospecting and biotechnology businesses by exploiting MGRs in ABNJ. Accordingly, the Indonesia's titles as megabiodiversity and archipelagic state that adjacent to the ABNJ are crucial in viewing national interests in the Agreement besides implementing global obligation to protect the ABNJ.

What Has Indonesia Done: Indonesia's Contribution

Generally, Indonesia has a good record in terms of its contribution to the development and also enforcement of international law of the sea. Briefly speaking, today's archipelagic state concept under UNCLOS would not be recognized if it was not Indonesia who voiced the concept during the LOSC I-III (backed up by neighbor and other maritime power states).²⁹ Another example is 'sink the vessels' policy which carried out by the GoI under the lead of Susi Pudjiastuti, former Minister of Marine Affairs and Fisheries. Although debatable,³⁰ it shows the seriousness of the GoI in protecting its waters and natural resources, while at the same time respecting international law.

The BBNJ Conference was conducted in five sessions: The first session was conducted in 2018 (4-17 September); the second and third sessions were in 2019 (25 March-5 April and 19-30 August); the fourth and fifth were in 2022 (7-18 March and 15-26 August). The fifth session was suspended and continued in 20 February-3 March and 19-20 June 2023. Indonesia actively participated since the beginning of the conference.

At the first session, delegates discussed various topics from overlapping jurisdiction, area-based management tools (ABMTs) to benefit sharing of MGRs. At 5 September 2018, the Indonesia's representative, Mr. Kalake, said that protection of ABNJ's marine biodiversity "is a 21st century issue that requires a contrusctive approach by the international community".³¹ He said that the BBNJ Agreement should respect the sovereign of coastal states over their continental shelf, including the 350-nautical miles (extension of continental shelf).³² He added that reconciling states' distinct interests on ocean affairs is not impossible.³³ On another day of the first session, at 12 September 2018, the representative of Indonesia reaffirmed that the Agreement would address possible jurisdictional overlaps and should respect Article 76 of UNCLOS on continental shelf.³⁴

At the second session, among other things that were discussed, the representative of Indonesia focused on how coastal state adjacent to ABNJ, like Indonesia, could be the first one impacted from activities in ABNJ. Peni Meidiwaty, said that it is important to consider output from coastal state, especially when it comes to transboundary issue such as

²⁹ Purwaka, "Tinjauan Hukum Laut Terhadap Wilayah Negara Kesatuan Republik Indonesia," 359.

³⁰ Article 73 of UNCLOS gives the state Parties authority to enforce its national laws within the EEZ. The debate was, whether Art. 73 covers the said 'sinking the vessels' policy.

³¹ "Delegates Say New Marine Biodiversity Treaty Must Respect Jurisdiction of Coastal States over Their Continental Shelf, as Intergovernmental Conference Continues | Meetings Coverage and Press Releases," accessed September 29, 2024, <https://press.un.org/en/2018/sea2077.doc.htm>.

³² Ibid.

³³ Ibid.

³⁴ "Principles, Objectives of Benefit-Sharing among Issues Discussed in Conference to Draft Marine Biological Diversity Treaty | Meetings Coverage and Press Releases," accessed September 29, 2024, <https://press.un.org/en/2018/sea2083.doc.htm>.

pollution.³⁵ She also touched the transparency issue concerning the management of MGRs and such management must be in accordance with international mechanism.³⁶ Therefore, coastal states must be actively consulted in the making of EIA and in regards with MGRs, it should be transparent for the sake of developing states.

The third session had entered the treaty draft discussion.³⁷ The Indonesia's representative requested that 'archipelagic states' be included in the list of special geographic circumstance in Article 7 about MGRs. That is because Article 7 of the draft did not put archipelagic state: *"the objectives of this Part are to: (a) build the capacity of developing state Parties, in particular least developed countries, landlocked developing countries, geographically disadvantaged states, small island developing states, coastal african states and developing middle-income countries, [...]"*.³⁸ The representative of Indonesia further called for a clearer version of Article 8 concerning types of MGRs: fish and fish samples; MGRs in situ and in silica; genetic sequence data and the use of fish as a commodity.³⁹

At the end of the fourth session, the representative of Indonesia, Mohammed Koba, delivered a closing statement that uphold three important areas of discussion.⁴⁰ Moreover, at the fifth session, Indonesia's textual proposals⁴¹ still focused on the same matters. First, the interest of coastal adjacent and archipelagic states that are vulnerable to the impacts of activities in the ABNJ. Second, in terms of EIA, transparency and report of EIA should consider the output of the coastal state in respond to the first concern about vulnerability of coastal state. Lastly, fish and their derivatives must be explicitly incorporated within the meaning or scope of MGRs in order to eliminate uncertainties.

Not only did Indonesia vigorously engage in the BBNJ Conference, but also in other regional and global forums discussing protection of the oceans. Indonesia is a member of the Intergovernmental Oceanographic Commission (IOC) for the Western Pacific (WESTPAC) which focuses on promoting international cooperation related to marine research, ocean observations as well as capacity building in the Western Pacific. On 4-7 April 2023, Indonesia hosted the 14th Session of the WESTPAC gathering relevant stakeholders such as governmental agencies, marine scientific communities.⁴² The main

³⁵ "Increased Cooperation, Special Attention to Developing States Must Steer Talks on New High Seas Treaty, Delegates Say as Conference Opens Second Session | Meetings Coverage and Press Releases," accessed September 29, 2024, <https://press.un.org/en/2019/sea2093.doc.htm>.

³⁶ Ibid.

³⁷ The draft treaty in question can be accessed at <https://documents.un.org/doc/undoc/gen/n19/146/28/pdf/n1914628.pdf>.

³⁸ Zero Draft of BBNJ Agreement, <https://documents.un.org/doc/undoc/gen/n19/146/28/pdf/n1914628.pdf>.

³⁹ "Concluding First Week of Marine Biodiversity Treaty Negotiations, Legal Experts Assess How to Regulate Genetic Resources, Share Benefits | Meetings Coverage and Press Releases," accessed September 29, 2024, <https://press.un.org/en/2019/sea2113.doc.htm>.

⁴⁰ "Statement of the Representative of Indonesia at the 4th Session," accessed September 29, 2024, https://www.un.org/bbnj/sites/www.un.org.bbnj/files/indonesia_statement_closing_igc_4_bbnj_.pdf.

⁴¹ United Nations General Assembly, "Compilations of Textual Proposals Submitted by Delegations by July 2022," accessed September 29, 2024, <https://www.un.org/bbnj/sites/www.un.org.bbnj/files/20220803bbnjigc5compilationproposals.pdf>.

⁴² "Fourteenth Intergovernmental Session of the IOC Sub-Commission for the Western Pacific (WESTPAC-XIV)," IOC Sub-Commission for the Western Pacific (WESTPAC), accessed September 30, 2024, <https://ioc-westpac.org/event/westpac-xiv/>.

agendas, among others, was to enhance technical and institutional capacities as well as to develop critical ocean solutions in the region.⁴³

One of the biggest contributions of Indonesia is the establishment of Archipelagic and Island States (AIS) Forum.⁴⁴ It was formally established through the adoption of the Manado Joint Declaration in 2018 as the followed-up of Ocean Conference in New York. This forum consists of 51 archipelagic states to discuss and cooperate in tackling common ocean issues they suffer. On October 2023, Indonesia hosted AIS Forum Conference in Bali which was attended by 32 representatives of States and 4 IOs *i.e.* ASEAN; Melanesian Spearhead Group (MSG); Pacific Island Forum (FIP); and United Nations Development Programme (UNDP) Indonesia.⁴⁵ Joko Widodo said that Indonesia will always be the vanguard of the inclusive cooperation between AIS member states.⁴⁶

Accordingly, active involvement during the BBNJ Conference and membership as well as participation in international forums show the Indonesia's true dedication to the development of law of the sea. Particularly, the protection on marine biodiversity in ABNJ.

The Ship Must Cast Off: What Are Next

The BBNJ Conference took approximately five years (with the suspension during the Covid-19) which was shorter than LOSC III that took almost a decade (1973-1982). Nevertheless, the fact that UNCLOS came into force after another decade (1994) should be a valuable lesson for the BBNJ Agreement. Political will and the readiness of international community in terms of their national infrastructures and legislations are the keys so the BBNJ Agreement would come into force as early as possible. The Agreement requires 60 ratifications and it is expected to be done by 2025.

It has been established the Indonesia's perspectives and contributions on the protection of ABNJ generally and specifically during the BBNJ Conference. However, the questions remain, is Indonesia ready? What is the GoI's current position towards the Agreement? Assuming the answers to that questions are satisfying, would the other states, especially developed states, have the same stance? We should keep monitoring the progress until the time comes.

The GoI has always been optimistic towards the adoption of the BBNJ Agreement. Luhut Binsar Pandjaitan, the Coordinator Minister of Maritime and Investment Affairs (*Menko Marves*), had given highest appreciation for the Indonesian team during the BBNJ Conference. According to him, the Indonesian team worked vigorously during the Conference to deliver the national interests of Indonesia, especially related to the development of MGRs' business for the welfare of Indonesian citizens and the entire

⁴³ Ibid.

⁴⁴ "Archipelagic & Island States Forum," AIS Forum, accessed September 30, 2024, <https://aisforum.org/about/>.

⁴⁵ Kementerian Luar Negeri Republik Indonesia, "KTT AIS Forum 2023 Sepakati Peningkatan Kerja Sama Inklusif, Setara, dan Solid," Kementerian Luar Negeri Republik Indonesia, accessed September 30, 2024, <https://kemlu.go.id/hanoi/id>.

⁴⁶ Ibid.

human kind.⁴⁷ In particular, he added that through the Agreement, biotechnology would be the leading industry in the future of Indonesia.⁴⁸

However, Pandjaitan realized the importance of concrete actions behind the euphoria of the adoption of the BBNJ Agreement. He stated that he would prepare anything that is needed starting from regulations to human resources.⁴⁹ Regulations and human resources should be in sync in order to achieve the effective implementation of the Agreement. Similar responses come from academics and also from non-governmental organization such as Indonesia Ocean Justice Initiative (IOJI). Represented by Gianova and Salim, IOJI also emphasized that the GoI must prepare for the stage of implementation by synchronizing relevant national laws and allocating enough resources⁵⁰ (could be human resources and monetary resources).

It seems that everyone would not disagree to the fact that there are too many laws in Indonesian legal system. Not to mention laws in different sectors, in maritime sector for instance, there are various laws that overlap one another. The more laws exist in Indonesia, the harder for them to be synchronized. The so-called 'hyper-regulation' is the term to explain such phenomenon.⁵¹

In the context of marine scientific research (MSR) for example, it is closely related to the exploration and then the utilization of MGRs. The regulations concerning MSR are found in at least three national legislations, namely *Undang-Undang Nomor 18 Tahun 2002 tentang Sistem Nasional Penelitian, Pengembangan dan Penerapan Ilmu Pengetahuan*; *Undang-Undang Nomor 31 Tahun 2004 tentang Perikanan sebagaimana diubah oleh Undang-Undang Nomor 45 Tahun 2009 (UU Perikanan)*; *Undang-Undang Nomor 32 Tahun 2014 tentang Kelautan (UU Kelautan)*. Nevertheless, those laws are unclear and overlap as can be seen in the following table.⁵²

No	Law	Substance
1	Law No. 18/2002	This Law does not specifically govern MSR and whether the research in question is commercial or non-commercial.

⁴⁷ "Melalui Perjanjian Bbnj Indonesia Dorong Percepatan Perlindungan Dan Pemanfaatan Laut Global | Portal Kementerian Luar Negeri Republik Indonesia," accessed October 1, 2024, <https://kemlu.go.id/portal/id/read/4872/berita/melalui-perjanjian-bbnj-indonesia-dorong-percepatan-perlindungan-dan-pemanfaatan-laut-global>.

⁴⁸ Ibid.

⁴⁹ Abdillah, "Indonesia Memastikan Terpenuhinya Kepentingan Negara Pulau dan Kepulauan dalam Pembentukan Perjanjian BBNJ," Kemenko Bidang Kemaritiman dan Investasi, accessed October 1, 2024, <https://maritim.go.id:443/>.

⁵⁰ Gabriella Gianova and Andreas Aditya Salim, "(Opini) BBNJ: Mengapa Penting Bagi Indonesia?," Indonesia Ocean Justice Initiative (IOJI), March 16, 2023, <https://oceanjusticeinitiative.org/2023/03/16/opini-bbnj-mengapa-penting-bagi-indonesia/>.

⁵¹ Bayu Dwi Anggono and Fahmi Ramadhan Firdaus, "Omnibus Law in Indonesia: A Comparison to the United States and Ireland," *Lentera Hukum* 7, no. 3 (November 23, 2020): 320, <https://doi.org/10.19184/ejlh.v7i3.19895>.

⁵² Isna Fatimah, "Aspek Hukum Dalam Pelestarian Sumber Daya Genetik Laut: Kebutuhan Dan Tantangan," *Jurnal Hukum Lingkungan* 2, no. 2 (2015): 125–29.

2	Law No. 45/2009	Only regulate research on fisheries' business. Its derivative, Permen KKP 04/2010, also does not differentiate fish and its genetic.
3	Law No. 32/2014	The Law governs biotechnology but is not followed by procedures and execution of.

No one is able to object the richness of Indonesia's marine resources, but there is a paucity in utilizing it, especially for pharmaceutical products.⁵³ *Badan Riset dan Inovasi Nasional* (BRIN)⁵⁴ even acknowledged that Indonesia is still import the raw materials for developing medicines and other pharmaceutical products. Shockingly, the import reaches 90%.⁵⁵ BRIN's representative added that the fund allocation for research development is very small, 0,25% of the 2018 Indonesia's GDP.⁵⁶ The author believes that indeed this matter is a little bit complicated. It converges between the condition of the economy of Indonesia and the priority, meaning which sectors the government puts first.

The bright side is, the GoI remains active in international forums and cooperate with other states or companies in developing marine technology as well as human resources. For instance, since 2018, *Kemenko Marves* of Indonesia has been cooperating with the Ministry of Oceans and Fisheries of Korea and successfully established the Korea-Indonesia Marine Technology Cooperation Research Center (MTCRC).⁵⁷ The agenda takes place annually and recently held in Busan, Korea on June 2024. The partnership has shown good results for both Indonesia and Korea especially in sectors of marine environment, marine satellite, technology and infrastructure.⁵⁸

Earlier in 2023, the GoI built a partnership with OceanXplorer to deepen the research technology and human capacity.⁵⁹ In particular, the partnership aimed to identify the potential of: biodiversity and bioprospecting; geological disaster; fisheries, energy and minerals and regulatory of marine resources in general.⁶⁰ This involves all relevant stakeholders of Indonesia besides *Kemenko Marves* such as BRIN, Ministry of Energy and Mineral Resources (ESDM) and *Pusat Hidro-Oseanografi Angkatan Laut Indonesia*.⁶¹ One of

⁵³ Delianis Pringgenies, *Bioprospeksi Bahan Hayati Laut Untuk Pengembangan Industri Farmasi di Indonesia* (Semarang: Universitas Diponegoro Press, 2019), 3.

⁵⁴ "Perlu Upaya Konkret Perkuat Riset dan Inovasi Bahan baku Obat," BRIN - Perlu Upaya Konkret Perkuat Riset dan Inovasi Bahan baku Obat, accessed October 1, 2024, <https://brin.go.id/news/118638/perlu-upaya-konkrit-perkuat-ri-set-dan-inovasi-bahan-baku-obat>.

⁵⁵ "Kapasitas Riset Farmasi Dan Alat Kesehatan Perlu Diperkuat - Kompas.Id," accessed October 1, 2024, <https://www.kompas.id/baca/humaniora/2023/08/07/kapasitas-ri-set-farmasi-dan-alat-kesehatan-perlu-diperkuat>.

⁵⁶ "Perlu Upaya Konkret Perkuat Riset dan Inovasi Bahan baku Obat."

⁵⁷ Abdillah, "Kolaborasi Inovatif: Komite Bersama ke-7 Korea-Indonesia di Bidang Sains dan Teknologi Kelautan," *Kemenko Bidang Kemaritiman dan Investasi*, accessed October 1, 2024, <https://maritim.go.id:443/>.

⁵⁸ Ibid.

⁵⁹ Andrea Magugliani, "Indonesia Perkuat Hilirisasi Sumber Daya Maritim Melalui Kerja Sama Eksplorasi Dan Riset Laut Dalam Bersama OceanX Dan Group 42," accessed October 1, 2024, <https://geologi.esdm.go.id/media-center/indonesia-perkuat-hilirisasi-sumber-daya-maritim-melalui-kerja-sama-eksplorasi-dan-ri-set-dalam-bersama-oceanx-dan-group-42-2>.

⁶⁰ Ibid.

⁶¹ Ibid.

the agendas was conducted in April – June 2024 where the researchers from Indonesia sailed and explored the deep sea with OceanXplorer vessel.

Apart from enhancing human resources and technological capacity, the final goal is to ratify the BBNJ Agreement. Developing states are keys in pushing the Agreement to come into force as soon as possible, including Indonesia. Indeed, before ratifying, the GoI should consider everything thoroughly, particularly about the future obligations under the Agreement. Such thorough consideration matters because the Agreement does not permit reservations⁶² unlike some international treaties. Article 70 of the Agreement clearly states that “No reservations or exceptions may be made to this Agreement, unless expressly permitted by other articles of this Agreement”.⁶³ Nevertheless, declarations or statements are allowed so long it does not change the legal effect of the provisions of the Agreement.⁶⁴

Conclusion

For a developing state like Indonesia, the BBNJ Agreement's provision on CBTMT is extremely important to support the development of national interests on ocean matters *e.g.* biotechnology, bioprospecting, security. Likewise, as a mega biodiversity and archipelagic state, the provision concerning the access and benefit sharing for MGRs as well as the transparency of EIA could give advantages to Indonesia because of the sharing of monetary and non-monetary benefits. Also, Indonesia's marine environment (EEZ and continental shelf) could be monitored from any harmful activities and pollutions due to EIA's report obligation. Most importantly, Indonesia is not a free-rider in the context of BBNJ's protection. During the BBNJ Conference and outside the Conference, Indonesia has always been active in the protection of its oceans, including the ABNJ. It can be seen from the active involvement of Indonesia's representatives during the Conference and on international forums and partnerships with other states.

If the ship has reached the shore, then Indonesia should be one of the contributors so that the ship could cast off immediately. That means, Indonesia should manage its overlapping national legislations that relevant to BBNJ Agreement; prioritize relevant sectors for the protection of ABNJ and its exploration (MSR, biotechnology, bioprospecting); keep the good track and enhance more through international partnerships in the field of marine technology and human resources; and lastly, consider thoroughly about administrative matters before ratifying the BBNJ Agreement. In that way, *the ship would sail soon.*

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⁶² The 1969 Vienna Convention on the Law Treaties (VCLT), Art. 2 states that reservation is “a unilateral statement, however phrased or named, made by a State, when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to that State.”

Accordingly, depending on respective states' interests before the international community, reservation holds important role as it may exclude them from certain obligations.

⁶³ BBNJ Agreement, Art. 70.

⁶⁴ BBNJ Agreement, Art. 71.

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