

The Urgent Need for Blue Bond Regulation in Indonesia¹

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Abstract

Indonesia, in collaboration with the UNDP, issued a sovereign blue bond in May 2023, valued at JPY 20.7 billion, to support the UN Sustainable Development Goals (SDGs). This bond, launched on the Japanese capital market, aims to promote sustainable marine ecosystems and the blue economy. This study investigates the need for blue bond regulation in Indonesia, advocating for the enforcement of international commitments and agreements. Using normative-exploratory legal research with statutory and conceptual approaches, the study employs the legal convergence theory. The findings highlight the urgent need to regulate blue bonds in Indonesia and suggest that international treaties on blue bonds can be integrated into Indonesian law without conflicting with the 1945 Constitution. The study recommends the prompt preparation and ratification of a blue bond law through the harmonization of the relevant international agreements. The agreement related to blue bonds in the Indonesian legal system needs to be aligned with national laws and regulations, following the principles and requirements outlined in relevant international agreements. Alternatively, blue bonds issued by international organizations in Indonesia should ensure not only compliance with international standards, but also contribute to national sustainable development, taking into account international law and national interests.

Keywords: blue bond, Indonesia, regulation, urgency.

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1. Introduction

Currently, every development in various countries refers to the Sustainable Development Goals (SDGs). The United Nations (UN) designed the SDGs as a long-term worldwide program to maximize all the potential and available resources of each country. To achieve the 17 SDG targets, while also demonstrating its commitment to the SDGs, the Indonesian government released Presidential Regulation Number 59 of 2017 on the Implementation of Development Targets.⁵ In addition to the SDGs, Indonesia agreed to the Paris Agreement of the United Nations Framework Convention on Climate Change, which was adopted by Law Number 16 of 2016. The agreement committed to keeping global warming below 2 degrees Celsius and to continue efforts to bring down temperature rise to 1.5 degrees Celsius.⁶ Through the ratification of these two international legal instruments, Indonesia is not only morally bound to implement them, but is legally bound to implement them in its national legal system. This means that all development planning in Indonesia, including that for the financial services industry, should ideally refer to these two international agreements.⁷

So far, the implementation of this international agreement has had quite good results. This is shown by Indonesia's ranking in the SDGs, which has increased over time. Indonesia currently ranks 97th out of 165 nations, indicating an improvement in its ability to achieve the Sustainable Development Goals based on the SDG Index scores.

The roadmap for finance, which consists of five main principles risk management, collaborative partnership, capacity enhancement, environmental and social governance and reporting, and sustainable priority economic sector development is one of the formulations for a sustainable financial system. The SDG's concept was specifically developed for the financial services industry by the OJK, which is the authority for financial services in Indonesia.⁸

The Government of Indonesia, through the OJK, has issued FSA Regulation No.18 of 2023 on the Issuance and Requirements for Sustainability-Based Bonds and Sukuks, a follow-up to its Roadmap for Sustainable Finance (POJK 18/2023) It takes the place of Financial Services Authority Regulation Number 60 of 2017 regarding the issuance of green bonds and the requirements associated with them. The purpose of POJK 18/2023 is to promote harmony between sustainable economic, environmental, and social components, in order to achieve sustainable development that can preserve economic stability. POJK 18/2023 specifies the procedures for issuing bonds for social

⁵ Irhamsyah, F. (2020). 'Sustainable Development Goals (SDGs) dan Dampaknya Bagi Ketahanan Nasional'. *Jurnal Lemhannas RI*, 7(2), 45-54. <https://doi.org/10.55960/jlri.v7i2.71>.

⁶ Ghaniyyu Faris Faza and Nurlina Husnita, 'Upaya Pengendalian Perubahan Iklim Melalui Pembatasan Kendaraan Berbahan Bakar Minyak Di Indonesia Berdasarkan Paris Agreement'. *Morality : Jurnal Ilmu Hukum* 7 (1). doi:10.52947/morality.v7i1.196, 2021.

⁷ Budi Endarto, F Hadi, and N H Fithri. 'Politik Hukum Green Bond Di Indonesia'. *Jurnal Bina Hukum Lingkungan*, 2022.

⁸ Amatul Haq Nadiyah, Alvina Syafira Fauzia and Anggun Puspita Khoirunnisa, 'Promoting Sustainable Financial System in Indonesia Towards SRI-KEHATI Index'. *SSRN Electronic Journal*. doi: 10.2139/ssrn.3347681, 2019.

purposes, environmentally friendly bonds, sustainable bonds, and sustainability-linked bonds.

The sustainability-based debt securities issuance guidelines, published by the International Capital Market Association (ICMA), are the ones that are referenced in POJK 18/2023. The ICMA produces voluntary rules for issuing social bonds, as well as green bonds. Although it is optional, many nations, like Indonesia, have adopted it and made it the norm for issuing social and green bonds.

In addition to bonds for social purposes, environmentally friendly bonds, sustainable bonds, and sustainability-linked bonds, the Indonesian government, with the support of the UNDP, issued a sovereign blue bond in May 2023. This sovereign blue bond is Indonesia's initial offering on the Japanese market for capital, priced at JPY 20.7 billion (150 billion US dollars). The issuing of the sovereign blue bond demonstrates Indonesia's commitment to applying new finance options for initiatives that benefit society and the long-term utilization of marine ecosystems, otherwise known as the blue economy.⁹

The bonds are offered for periods of seven and 10 years, with coupon rates of 1.2 and 1.43 percent, respectively. The proceeds from the bond sale will significantly strengthen Indonesia's blue economy, providing funds for coastal protection, sustainable fisheries and aquaculture management, along with marine biodiversity conservation and mangrove restoration.¹⁰

Sri Mulyani, as the Indonesian Finance Minister, explained that the sovereign blue bond is expected to be an essential mechanism to secure the preservation and governance of marine and coastal assets sustainably, and in the future it is hoped that it can reduce the finance gap that prevents Indonesia from achieving its contribution to the impact of sustainable development.¹¹

Besides the Republic of Indonesia, the Republic of Seychelles has also issued sovereign blue bonds. These bonds aim to finance sustainable marine activities.¹² This publication has been financed by the Global Environmental Facility, and guaranteed by the World Bank. Similarly, the earnings will be used for marine protection, sustainable economic growth, and climate change mitigation, as is the case with the Belizean government.¹³ The Commonwealth of the Bahamas uses the profits from bonds to support the blue economy¹⁴, while the Government of Barbados uses profits from bonds

⁹ UNDP - AIS Forum, 'Indonesia Launches the World's First Publicly Offered Sovereign Blue Bond – with UNDP's Support'. <https://www.undp.org/indonesia/blog/indonesia-launches-worlds-first-publicly-offered-sovereign-blue-bond-undps-support>. March, 2023.

¹⁰ Unsdg. 'Indonesia Launches the World's First Publicly Offered Sovereign Blue Bond'. <https://unsdg.un.org/latest/stories/indonesia-launches-worlds-first-publicly-offered-sovereign-blue-bond>. July 13, 2023.

¹¹ Ibid.

¹² Roth, N, Thiele, T, and von Unger, 'Blue Bond: Financing Resilience of Coastal Ecosystems'. https://www.4climate.com/dev/wp-content/uploads/2019/04/Blue-Bonds_final.pdf, 2019.

¹³ Murray Ruth, 'A Governance Analysis of Three MPAs in Belize: Conservation Objectives Compromised by Tourism Development Priorities?' *Marine Policy* 127. doi: 10.1016/j.marpol.2020.104243, 2021.

¹⁴ Sealey Kathleen Sullivan and Alan Logan, 'The Commonwealth of the Bahamas'. In *World Seas: An*

for the ocean economy and water management¹⁵. The People's Government of Hainan Province uses the earnings from bond sales for its maritime economy and marine protection initiatives, water hygiene, sustainable shipping and port logistics, fisheries and seafood value chain, and marine ecosystem restoration¹⁶. However, several of these countries are classified as Small Island Developing States (SIDS)¹⁷, because they differ from the Republic of Indonesia, which is an archipelagic republic with a huge sea area. Gabor believes that the present widespread issuing of sovereign blue bonds is a useful tool for the government to consider new development options that promote social justice and environmental sustainability¹⁸.

The World Bank defines a blue bond as "a debt instrument issued by governments, development banks, or others to raise capital from impact investors to finance ocean-based projects with positive environmental, economic, and climate benefits"¹⁹. According to this definition, blue bonds can be issued by a government, banks, or other parties that can be viewed as private-sector firms. The essence of this statement is that the capital raised from investors through the issuance of blue bonds improves the environment, the economy, and the climate.

Blue bonds, as a capital market instrument, should be established in Indonesia. There are at least two factors here for this. The first is related to Indonesia being an archipelagic country, which has 17,508 islands, with 65% of the total area being sea covering an area of 6,400,000 km². The sea area ownership is regulated by the exclusive economic zone; Indonesia has the right to manage and utilize the natural assets contained in its ocean territory for the objectives of exploration and exploitation, and the conservation and development of its marine resources. Second, Indonesia has an obligation to fulfill its commitment to SDG 14 "life below water," which is to preserve marine and coastal ecosystems sustainably, while protecting them from pollution and the effects of ocean acidification.

Based on these two considerations, it is clear that quite a large amount of financing is needed, and it is impossible to just rely on funding that comes from the APBN (state budget). Because of this, funding is also needed from abroad, or the private sector, such as companies operating in, or related to, maritime affairs.

Even though blue bonds, in their current development, have become an

Environmental Evaluation Volume I: Europe, the Americas and West Africa. doi: 10.1016/B978-0-12-805068-2.00030-9, 2018.

¹⁵ Mohammadi Elham, Simron Jit Singh and Komal Habib, 'How Big Is Circular Economy Potential on Caribbean Islands Considering E-Waste?' *Journal of Cleaner Production* 317. doi: 10.1016/j.jclepro.2021.128457, 2021.

¹⁶ Bosmans Pieter and Frederic de Mariz, 'The Blue Bond Market: A Catalyst for Ocean and Water Financing'. *Journal of Risk and Financial Management* 16 (3). MDPI. doi:10.3390/jrfm16030184, 2023.

¹⁷ March Antaya, Pierre Failler and Michael Bennett, 'Challenges When Designing Blue Bond Financing for Small Island Developing States'. *ICES Journal of Marine Science* 80 (8). doi:10.1093/icesjms/fsac238, 2023.

¹⁸ Gabor Daniela, 'The Wall Street Consensus'. *Development and Change* 52 (3). doi:10.1111/dech.12645, 2021.

¹⁹ The World Bank, 'Sovereign Blue Bond Issuance: Frequently Asked Questions'. <https://www.worldbank.org/en/news/feature/2018/10/29/sovereign-blue-bond-issuance-frequently-asked-questions>, October 29, 2018.

important instrument in implementing the SDGs in Indonesia, so far there are no regulations relating to blue bonds themselves. In other words, there is still a legal vacuum in Indonesia regarding blue bonds. This is really ironic.

In this regard, Nagisa Shiiba said that "National and international laws pertaining to ocean governance give legal guidelines for creating suitable financial frameworks that carry out financial concepts intended to strengthen the blue economy"²⁰. This is also the reason why sovereign blue bonds were issued by the Indonesian government on the Japanese capital market²¹.

However, what must be paid attention to is the legal development relating to the issuance of thematic bonds, including blue bonds, which so far have only referred to the standards issued by international organizations that are worth paying attention to. This is because it is believed that not all the legal principles are suitable for the conditions, culture and economic interests in Indonesia.

Based on the objective conditions mentioned above, the relevant legal issues can be defined as follows:

1. What is the sense of urgency for regulating blue bonds in Indonesia?
2. What is the rationality for implementing agreements or international agreements related to blue bonds in the legal system in Indonesia?

2. Methodology

This research is normative legal research of an exploratory type, namely research carried out to obtain explanations and data about things that are not yet known. This type of research is carried out to discover new knowledge in a certain field²². Exploratory legal studies are designed to explore new emerging issues that may not have been, or have seldom been, used as objects of inquiry previously²³. This is very significant to the research on blue bonds, which is a novel study into the subject of financial law, particularly in relation to one of Indonesia's instruments for the capital markets.

This study applies a conceptual approach to the doctrine of the theory under consideration. In addition to that, this study will also use the statute approach, which examines the subject of this study using norms in the laws and regulations in force in Indonesia, and in some international conventions, agreements, and agreements related to blue bond issuance.

²⁰ Shiiba Nagisa, Hsing Hao Wu, Michael C. Huang, and Hajime Tanaka, 'How Blue Financing Can Sustain Ocean Conservation and Development: A Proposed Conceptual Framework for Blue Financing Mechanism'. *Marine Policy* 139. doi: 10.1016/j.marpol.2021.104575, 2022.

²¹ Aditya Dimas, 'Rechtsvacuum hukum kekayaan intelektual dalam hal discovery rechtsvacuum of intellectual property right on discovery case'. *Journal Poros Hukum Padjadjaran* 1 (1). doi:10.23920/jp, 2019.

²² Suteki taufani and galang, *Metodologi Penelitian Hukum (Filsafat, Teori Dan Praktik)*. Depok: Rajawali Press, 2018.

²³ Irwansyah and Ahsan Yunus, *Penelitian Hukum, Pilihan Metode & Praktik Penulisan Artikel*. Yogyakarta: Mirra Buana Media, 2022.

The primary legal materials in this research are found in statutes, agreements, and international conventions, particularly those pertaining to blue bonds that Indonesia has ratified. Secondary legal materials include legal journals and textbooks that discuss theories related to the issues covered in this research. A review of the literature was used to gather legal materials. Using the methodology employed in this study, all the legal elements are chosen, explained, and examined before being connected to the statutory rules and methodically formulated in accordance with the subject.

To discuss the study of the void of statutory regulations (*rechstvaccum* or legal vacuum) relating to blue bond regulations in Indonesia, there are several models that can be implemented, namely the unification or harmonization of the regulations developed by international organizations^{24,25}.

Uniformity is the acceptance or approval of a set of norms, standards, and principles established in an international treaty. This perspective is based on George A. Zaphiriou's opinion, which states "International unification means the adoption of an agreed-upon set of rules, standards, or guidelines for transnational transactions. In international trade, this was accomplished by custom, international practice, or international agreement within the framework of professional organizations, or between governments by an international convention"²⁶. According to this point of view, unification can be achieved by customs, global practices or agreements between nations, or countries, via international conventions. The scope of unification includes the repeal and replacement of the existing legal systems with new ones.

Harmonization, on the other hand, is the act of producing balance and avoiding conflict. The goal of harmonization is primarily to alter the current laws so that harmony develops. International agreements between nations, or directives from supranational organizations, can be used to create harmonization. Legal harmonization's primary goal is to find consistency or common ground between the core tenets of the various current legal systems.

However, both unification and harmonization cannot be done just like that, but interests must be considered, which must be studied more deeply. Therefore, this study will use the convergence theory developed by Taufiqurrahman. The convergence theory's framework places the fulfillment of national interests as the first filter, and, at the same time, the main orientation for legal reform activities in Indonesia, while still considering the fulfillment of international interests, which he calls the universalistic particularism paradigm²⁷.

²⁴ Budi Endarto Dkk, *Potret Hukum Kontemporer Di Indonesia*. Vol. 1. Yogyakarta: KYTA, 2022.

²⁵ Setianingrum Reni Budi, 'ASEAN Agreement on Competition Law Enforcement: Ius Constituendum Dalam Hukum Persaingan ASEAN'. *Jurnal Persaingan Usaha* 3 (2), 2023.

²⁶ George A. Zaphiriou, 'Unification and Harmonization of Law Relating to Global and Unification and Harmonization of Law Relating to Global and Regional Trading Regional Trading'. *Northern Illinois University Law Review* 14 (02): 14–19. <https://huskiecommons.lib.niu.edu/niulr>, 1994.

²⁷ Budi Endarto Dkk, *op. cit*, 2022.

3. Discussion

3.1. Constitution and blue economy in Indonesia

The Djuanda Declaration of 1957 established a regulatory orientation that prioritized the limits of Indonesia's waters or seas at the outset of the Republic of Indonesia's independence, which essentially stated:

1. Indonesia's geography is archipelagic, with over 13,000 islands spread across the ocean.

2. For the territorial unity of the Republic of Indonesia, all the islands and waters (straits) between them should form a unified whole and cannot be separated between one island and another, or between islands and their waters.

3. The determination of territorial water boundaries, as stated in the "Teritoriale Zee en Maritime Kringen Ordonantie 1939" contained in Staatsblad 1939 No. 332 Article 1 paragraph (1), is no longer suitable for Indonesia's interests after independence.

4. Indonesia, after becoming sovereign as a self-governing country, will have the complete authority and obligation to control everything in order to ensure the country's and its people's security and safety.

The 1957 Djuanda Declaration's points were fought for in multilateral forums, particularly at the United Nations, and the results were widely accepted internationally, before being adopted as material for the United Nations Convention on the Law of the Sea (UNCLOS) at the III International Conference on the Law of the Sea in 1982, also known as UNCLOS 1982. Furthermore, UNCLOS 1982 was ratified based on Law Number 17 of 1985, hence the officially recognized international idea of an archipelagic state or archipelagic country became part of the Indonesian national legal system²⁸.

Furthermore, the concept of an archipelagic country has also been elaborated in the Indonesian Constitution, as specified in Article 25A of the Republic of Indonesia's 1945 Constitution, which confirms that the Unitary State of the Republic of Indonesia is an archipelagic country, defined by an archipelago with territory whose boundaries and rights are determined by law. The sections of this article emphasize Indonesia's archipelagic status. If we examine this attentively, we can observe that international legislation and conventions governing the sea first focused solely on the context of the Law of the Sea, as stated in UNCLOS 1982. This means that the discussion is still limited to the law of the sea, which is a subset of international public and private law.

Globally, sea-related developments are currently taking place not only within national borders, but also in financing and management that is focused on sustainability. As a result, the increasing usage of words like "blue economy" and "ocean economy" emphasizes the importance of combining sustainability and conservation into marine management. Several organizations characterize the blue economy as "focusing firmly

²⁸ Jimly Asshiddiqie, 'Green and Blue Constitution', Undang-Undang Dasar Berwawasan Nusantara. Depok: Rajawali Pers, 2021.

on the sustainability of ocean resource use, while the ocean economy simply indicates the development and growth of ocean industries," even though these two ideas are commonly used interchangeably^{29,30}.

As one of the world's largest archipelagic countries, Indonesia has an abundance of marine assets and carries the responsibility for achieving sustainable marine area management. This mindset is essential when looking at Indonesia's commitment to implementing the concept of sustainable development, as well as the international commitment to realizing the SDGs, particularly SDG 14, which deals with life below water, by 2030³¹. However, before this commitment was ratified, Indonesia had regulated the blue economy concept, as stated in Article 14 of Law Number 32 of 2014 on Marine Management. It states that the government and regional governments should, in line with their authority, carry out marine management for the maximum prosperity of the people through its use and exploitation. Marine resources are managed in accordance with blue economy principles. These provisions demonstrate that Law No. 32 of 2014 has accepted the blue economy concept for marine utilization and exploitation. Utilization activities include fisheries, energy and mineral resources, coastal and small island resources, and non-conventional resources. Meanwhile, what is meant by exploitation is marine industry, marine tourism, maritime transportation, and marine construction.

A more comprehensive blue economy concept can be seen from a statement by Maria Corazon M. Ebarvia (2016)³², which refers to a sustainable ocean-based economic model that relies mainly on coastal and marine ecosystems and resources. Its objectives include achieving sustainable and inclusive development, protecting coasts and oceans, mitigating environmental risks and ecological crises, addressing water, energy, and food security, protecting people's health, livelihoods, and welfare in coastal zones, and promoting ecosystem-based climate change mitigation and adaptation measures. In line with Ebarvia, Pawan G. Patil et al. (2018),³³ define the blue economy as follows, "The blue economy is defined as a sustainable ocean economy, in which wealth is balanced with the health of ocean ecosystems and their natural assets, and is socially sustainable." At this point, the United Nations Environment Program, (2021) determines a blue economy in the following terms: "one of them wherein the sustainable use of coastal and ocean assets provides equitably and inclusively distributed advantages for people, preserves and restores healthy ecosystems, and contributes to

²⁹ OECD, The Ocean Economy in 2030. OECD. doi:10.1787/9789264251724-en, 2016.

³⁰ World Bank Group and United Nations, 'Increasing Long-Term Benefits of the Sustainable Use of Marine Resources for Small Island Developing States and Coastal Least Developed Countries Blue Economy'. Washington, 2017.

³¹ United Nations Development Programme, 'Blue Financing Strategic Document', 2022.

³² Ebarvia, Maria Corazon M. (2016) "Economic Assessment of Oceans for Sustainable Blue Economy Development," *Journal of Ocean and Coastal Economics*: Vol. 2: Iss. 2, Article 7. DOI: <https://doi.org/10.15351/2373-8456.1051>.

³³ Patil, P. G., Virdin, J., Colgan, C. S., Hussain, M. G., Failler, P., & Vegh, T. (2018). *Toward a blue economy: a pathway for Bangladesh's sustainable growth*. World Bank. <https://openknowledge.worldbank.org/handle/10986/30014>.

delivering on worldwide goals for a sustainable future”³⁴.

The blue economy concept has been implemented in Law No. 32 of 2014, which defines it as follows: "a method to improve sustainable marine management and protection of the sea and coastal resources, and their ecosystems, in order to achieve economic growth with the concepts of community participation, the efficiency of resources, reducing waste, and double added value (double revenues)." This concept is in line with the blue economy concept, which is oriented toward a sustainable ocean economy and social sustainability.³⁵ Because in principle, the blue economy concept should ideally also be oriented toward the conservation of marine biodiversity³⁶ and a sustainable ocean economy^{37, 38}. This is in line with the global paradigm related to the goals to be achieved in managing the marine environment, as stated by Shiba et al. The essential concepts of the blue economy are sustainability, the conservation of the marine environment and the resources aligned to economic growth, all of which are increasingly recognized as global imperatives³⁹. More specifically, the blue economy is defined as the "sustainable use of ocean resources for economic growth, improved livelihoods, employment, and ocean ecosystem health."⁴⁰ With the development of the blue economy concept, Law No. 32 of 2014 is expected to be a reference for the development of statutory regulations under it, especially those related to the development of financing or blue finance, especially blue bonds in Indonesia.

3.2. The urgent need to regulate blue bonds in Indonesia

Indonesia's goal, as outlined in the Long-Term Development Plan 2005-2025, which is governed by Law Number 17 of 2007, is Independent Indonesia, Advanced, and Fair. One of Indonesia's key goals is "to develop as a strong, advanced, and independent nation, that forms and enforces policies based on its national interests, through initiatives such as the building of an integrated marine economy, optimized for the sustainable use of marine resources"⁴¹. Based on the Long-Term Development Plan 2005-2025, the Coordinating Minister of Maritime Affairs and Investment, in partnership with the UNDP, assesses the necessity for the Blue Financing Strategic Document. The drafting of the Blue Financing Strategic Document itself is also a

³⁴ March, Antaya, Pierre Failler, and Michael Bennett. 2023. 'Challenges When Designing Blue Bond Financing for Small Island Developing States'. *ICES Journal of Marine Science* 80 (8). doi: 10.1093/icesjms/fsac238.

³⁵ Patil P. G., J. Virdin, C. S. Colgan, M. G. Hussain, P. Failler and T. Vegh, *op. cit.*, 2018.

³⁶ Shiiba Nagisa, Hsing Hao Wu, Michael C. Huang and Hajime Tanaka, *op. cit.*, 2022.

³⁷ Thompson Benjamin S, 'Blue Bonds for Marine Conservation and a Sustainable Ocean Economy: Status, Trends, and Insights from Green Bonds'. *Marine Policy* 144. doi: 10.1016/j.marpol.2022.105219, 2022.

³⁸ World Bank | United Nations Department of Economic and Social Affairs, The Potential of the Blue Economy. Washington DC: World Bank. doi:10.1596/26843, 2017.

³⁹ Ibid.

⁴⁰ Ibid.

⁴¹ Blue Financing Strategic Document, 'Coordinating Minister of Maritime Affairs and Investment Republic of Indonesia and UNDP', 2022.

mandate to actualize the blue economy principles specified by Article 14 of Law Number 32 of 2014, which is divided into two sectors, namely the utilization of marine resources and the exploitation of marine resources, or enabling of the marine environment. These two sectors have several important considerations. The first is the three components of sustainable development, which are environmental, economic, and social factors. As a result, the sector chosen as part of the blue finance plan must demonstrate a balance of characteristics from the three underlying aspects of sustainable development. Second, the sector's selection process should involve both the stakeholders' perspectives and expert assessment⁴².

The Ocean Policy Institute states that the concept of the "blue economy" differs from the expanding global focus that strives to build a legal tool to protect the ocean environment and its associated resources, in order to improve local economies and stimulate community development. The reason for supporting the blue economy is that there is an urgent need to develop appropriate financing sources and structures that can supply solid financial resources while exploring new investment opportunities⁴³. The development of the "blue economy" is regarded as critical because it is intended to promote and encourage a global shift toward economic growth that is consistent with marine sustainability. In general, the blue economy refers to financial or investment instruments that ensure the preservation of the maritime environment and marine-related resources, while also aiming to strengthen the blue economy. Thus, an evolution and diversification in financing is required, while improving marine conservation and the sustainable use of marine resources⁴⁴.

However, in Indonesia, there are currently no regulations governing an operational blue economy. Yoshioka et al. (2020) suggest "a regulation-driven blue finance mechanism for the blue economy's development" to help build a blue economy. They made it abundantly obvious that efforts need to be made to offer feasible regulatory and institutional solutions that incorporate the concept of blue funding principles, in the context of the applicable legal regimes involving marine governance at the legal, institutional, and domestic levels⁴⁵.

However, as previously noted, in Indonesia the themed bond rules, governed by POJK 18/2023, currently only relate to green bonds, social bonds, sustainable bonds, and sustainability-linked bonds. While maintaining economic stability and promoting sustainable development are the key goals of POJK 18/2023, the country's economic system places a higher priority on harmony between sustainable economic, environmental, and social factors. However, it has not touched on the aspects of blue finance, one of which is in the form of blue bonds. For this reason, in the future, as one of the world's largest archipelagic countries, it is crucial to develop legislation for blue

⁴² Ibid.

⁴³ Shiiba Nagisa, Hsing Hao Wu, Michael C. Huang, and Hajime Tanaka, *op. cit.*, 2022.

⁴⁴ Wabnitz Colette C.C., and Robert Blasiak, 'The Rapidly Changing World of Ocean Finance'. *Marine Policy* 107. doi: 10.1016/j.marpol.2019.103526, 2019.

⁴⁵ Yoshioka Nagisa, Hsing Hao Wu, Michael C Huang, and Hajime Tanaka, 'Proposing Regulatory-Driven Blue Finance Mechanism for Blue Economy Development'. Asian Development Bank, ADBI Working Papers 1157. Tokyo, 2020, <https://www.adb.org/publications/proposing-regulatory-driven-blue-finance-mechanism-blue-economy-development>.

bonds. It is envisaged that this will actualize Indonesia's promise to implement the idea of sustainable development, particularly SDG 14, by 2030.

3.3. The rationality of implementing an international legal regime related to blue bonds in Indonesia

In Indonesia, the regulations relating to issues with the ocean environment stem from the constitution in force in the Republic of Indonesia, and the related regulations under it. Article 25 A of the 1945 Constitution said that Indonesia is an archipelagic nation whose territorial rights and bounds should be determined by legislation. In addition, to comply with the treaty that governs Indonesia's territorial ocean sovereignty and legal status, the government ratified the United Nations Convention on the Law of the Sea (UNCLOS 1982) with Law Number 17 of 1985. In addition, the Safety of Life at Sea (SOLAS 1974) was introduced in Indonesia and subsequently ratified by Presidential Degree Number 65 of 1980. Therefore, it can be concluded that Indonesia has set up the necessary frameworks to carry out policies aimed at developing a blue economy.

The operational policies for the actualization of the blue economy concept are currently regulated in many regulations for various industries, which are focused on legislation to support the ocean economy concept:

1. Sea Law No. 32 of 2014.
2. Employment Law No. 11 of 2020 (10 Amendments to Law No. 32 of 2014).
3. Indonesian Ocean Policy Presidential Regulation No. 16 of 2017. This comprises a four-year action plan paper and the national document for Indonesia's ocean policy. The first action plan covers the years 2016–2019. A distinct presidential rule will specify the next action plan paper.
4. The National Medium Term Development Plan 2020–2024, as outlined in Presidential Regulation No. 18 of 2020.

Several regulations have been presented; nevertheless, the regulations governing marine management are still incomplete and do not include the operating regulations for blue bonds. Aside from the legislation, Indonesia has agreed to other international proposals, including:

1. The Indian Rim Association's Declaration on the Blue Economy in the Indian Ocean Region, also known as the Jakarta Declaration on the Blue Economy. In order to promote the blue economy in the ocean region, the proclamation underlines the importance of developing communication and marine connectivity in the Indian Ocean region, as well as working collaboratively with the relevant stakeholders. To achieve sustainable development, it also offers rules for establishing and carrying out the blue economy.

2. Joint Declaration between Indonesia and Sweden on Collaboration in the Blue Economy.

3. The Blue Economy Declaration of ASEAN Leaders.

4. Australia and Indonesia signed a Joint Declaration on Collaboration on the

Green Economy and Energy Transition.

So far, the various commitments, and international cooperation as described above, although binding, do not have the force to create a constructive blue economic climate. Furthermore, in order to accelerate marine-based economic development, Indonesia developed the Blue Economy Development Framework for Indonesia's Economic Transformation⁴⁶. This was developed with the understanding that a sustainable ocean economy would be part of a new wave of economic plans. In accordance with the 2030 Agenda for Sustainable Development, the new wave economic concept emphasizes the sustainable use and conservation of natural resources in the world's oceans, seas, and coastal areas⁴⁷.

If we examine the OECD's formulation, it shows that the contemporary economic wave has now shifted toward the sustainable use and conservation of the oceans, and is no longer just about exploring marine products. This is consistent with the common heritage of mankind (CHM) principle, described by Chuanling Wang and Yen-Chiang Chang as the theoretical basis for some marine management approaches, which is significant for both present and future international law-making, and may serve as the foundation of the brand-new system for the international law of the sea in the years to come⁴⁸. Furthermore, it has been declared that future generations' rights to use the oceans' natural resources with the CHM's legal qualities must be respected. It should be underlined that this does not imply that future generations are subject to international law, but rather it promotes the maintenance of intergenerational justice⁴⁹.

However, what needs to be noted is that realizing the sustainable use and conservation of the oceans, in the form of blue financing, requires strong legal arrangements and cannot be developed by each country. It also requires the idea that blue financing principles should be in the context of the applicable legislative regime of maritime governance, both at the international and domestic levels. What is meant by solid legal regulation is that it has a mandatory nature that can be applied in each country. This means that it is not enough to just adopt standard voluntary guidelines that have been published by international organizations, such as the International Capital Market, one of which has formulated voluntary guidelines for issuing social bonds, and so far, this has been used as a reference for drafting regulations in Indonesia.

In this regard, progressive thinking is needed, as proposed by Shiiba⁵⁰ et al. (2022). According to them, to develop a blue economy, a legal mandate is required before establishing a financial mechanism to support the blue economy within the

⁴⁶ Ministry of National Development Planning/National Development Planning Agency (BAPPENAS), 'Blue Economy Development Framework for Indonesia's Economic Transformation'. In edited by Sri Yanti, Deasy Damayanti Putri Pane, Armand Sim. Leonardo Adypurnama Alias Teguh Sambodo. Jakarta: Ministry of National Development Planning/National Development Planning Agency (BAPPENAS), 2021.

⁴⁷ OECD, Sustainable Ocean for All: harnessing the benefits of sustainable ocean economies for developing countries. The Development Dimension, 2020.

⁴⁸ Wang Chuanliang, and Yen Chiang Chang, 'A New Interpretation of the Common Heritage of Mankind in the Context of the International Law of the Sea'. *Ocean and Coastal Management* 191. doi: 10.1016/j.ocecoaman.2020.105191, 2020.

⁴⁹ Ibid.

⁵⁰ Shiiba, Nagisa, Hsing Hao Wu, Michael C. Huang, and Hajime Tanaka, *op. cit.*, 2022.

framework of a binding international legal regime. This allows each country to wisely implement the concepts of blue economy finance on an international scale.

Additionally, Nagisa Shiiba et al. (2022)⁵¹, recommended that UNCLOS define the term "blue economy" and the guidelines for acceptable blue finance. Part XII of UNCLOS, specifically the Protection and Preservation of the Marine Environment, must be revised with additional duties and requirements to support marine economic development. In short, merging the concepts of the blue economy and blue finance within the context of UNCLOS can give legal mandates and guidance for state sovereignty and international financial institutions to implement the growth of blue finance, as well as the essential conceptual framework.

Indonesia, a UNCLOS ratifying country that is obligated to apply the principles, particularly the CHM principle, can implement a binding and mandatory international legal regime related to the blue economy in its legal regulations, providing a theoretical foundation for some marine management approaches⁵². Chuanliang Wang and Yen-Chiang Chang underline once more that the principle of CHM will become the foundation of future regimes of international maritime law⁵³. Aside from that, the principle of CHM is particularly related to this topic, since CHM is a legal principle in international law that provides a general framework for universal responsibility, sustainable legislation, and environmental protection⁵⁴.

Moreover, the establishment of blue economy regulations through the implementation of the regime of international maritime law in Indonesia, can be carried out through two options: either the unification or the harmonization of the ratified international agreements. As previously stated, one aspect of unification is the removal of an existing legal system and its replacement with a new one. Harmonization, on the other hand, is the act of producing balance and avoiding conflict. The goal of harmonization is primarily to alter the current laws so that harmony develops. International agreements between nations or directives from supranational organizations that seek to establish consistency or common ground in the core ideas of the diverse legal systems currently in place can be used to accomplish harmonization Adolf.

However, both unification and harmonization cannot be done just like that; interests must be considered, which need to be studied more deeply. Therefore, this study will use the convergence theory developed by Taufiqurrahman. The convergence theory's framework places the fulfillment of national interests as the first filter and, at the same time, the main orientation in legal reform activities in Indonesia while still considering the fulfillment of international interests, which he calls the universalistic

⁵¹ Ibid.

⁵² Wang Chuanliang, and Yen Chiang Chang, *op. cit.*, 2020.

⁵³ Ibid.

⁵⁴ Syofyan, Ahmad, Rudi Natamiharja, Melly Aida, Desy Churul Aini, and Rasti Putri Januarti, 'Discourse enterprise in natural resource management for the common heritage of mankind'. *Indonesian Journal of International Law* 21 (1). Center for International Law Studies, Faculty of Law, Universitas Indonesia: 29–50. doi:10.17304/ijil.vol21.1.2, 2023.

particularism paradigm^{55, 56}.

Particularism itself is a system or understanding that prioritizes individual interests⁵⁷. In the global context, it means the individual interests of a country (in this case Indonesia). Meanwhile, universalism is a system, or understanding that has a general or overall character (universal). Thus, the universalistic particularism paradigm here can be interpreted as a framework for thinking, behaving and acting in a manner that prioritizes fulfilling the national interests of a country without abandoning the dynamics of international/global development.

The existence of the universalistic particularism paradigm is actually rooted in the combination (convergence) between positive legal thinking (positivism) and natural legal thinking (naturalism). John Austin, as one of the initiators of positivism, is of the view that law, in the true sense of what is called "positive law," is law made by the authorities. Law in this perspective contains several elements, namely orders, sanctions, obligations and sovereignty⁵⁸. The validity of a positive law is limited or restricted by space and time. The validity of the law is particular. In contrast to positivism, legal naturalism views its validity as universal, without being limited by time and space⁵⁹.

Particularism emphasizes the aspect of sovereignty, where every sovereign country has full power to regulate everything that exists (including the law) in the territory of the country concerned, without interference from other countries. From this perspective, particularism always gives rise to a diversity of applicable laws. In contrast to particularism, universalism always creates uniformity in the applicable laws. This is in line with the view of universalism itself, namely that the law applies universally. Departing from this view, the universalistic particularism paradigm can be interpreted as a framework for thinking, behaving, and acting that is based on diversity and uniformity.

4. Conclusions

According to the prior explanation, we can conclude the following:

a) It is very urgent to regulate blue bonds in Indonesia, considering that Indonesia still does not have a law that specifically regulates them. The arrangement itself is, indirectly, a form of Indonesia's commitment to implementing the concept of sustainable development, especially in implementing SDGs 14 in 2030.

b) International agreements, or agreements relating to blue bonds, can be applied as the main reference for regulating blue bonds in Indonesia. This

⁵⁵ Budi Endarto Dkk. *op. cit.*, 2022.

⁵⁶ Taufiqurrahman, S. H. M. Hum., 'Paradigm of Universalistic Particularism to Reform the Indonesian Economic Law in the Framework of Establishing the 2015 ASEAN Economic Community 1'. *Juridical Tribune - Tribuna Juridica* 4 (1), 2014.

⁵⁷ Mariyam, Colle Said and Normawati, 'Dampak Budaya Partikularisme terhadap Tatahan Masyarakat Busak 1 Kecamatan Karamat dalam Tinjauan Pendidikan Islam', *Jurnal Kolaboratif Sains* 3(6), 2020.

⁵⁸ Austin, John. "Frontmatter." *Frontmatter*. In *Austin: The Province of Jurisprudence Determined*, edited by Wilfrid E. Rumble, i–iv. Cambridge Texts in the History of Political Thought. Cambridge: Cambridge University Press, 1995, doi:10.1017/cbo9780511521546.

⁵⁹ Kamarusdiana, *Filsafat Hukum*. Jakarta: UIN Jakarta Press, 2018.

implementation is rationally based on the assumption that substantive international agreements, or blue bond agreements, do not conflict with, and may even complement, national interests, as stated in Paragraph 4 of the Preamble to the Constitution of the Republic of Indonesia, namely the realization of a prosperous Indonesian society.

As a follow-up to the conclusions formulated above, the following can be recommended:

a) Indonesia should immediately prepare and ratify special regulations regarding blue bonds, in order to further guarantee legal certainty for all the parties involved in implementing the concept of sustainable development, especially in implementing SDGs 14 in 2030.

b) The implementation of international agreements, or agreements regarding blue bonds, into the legal system in Indonesia should be carried out by harmonizing national laws and regulations with international agreements, or the agreements relating to blue bonds produced by international organizations, while still paying attention to the values and principles of the existing local/national interests.

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