

PENERAPAN PRINSIP PENCEMAR MEMBAYAR (*POLLUTER PAYS PRINCIPLE*) DALAM REZIM HUKUM *MARINE BIODIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION*

INTISARI

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Penelitian ini bertujuan untuk mengetahui bagaimana penerapan prinsip pencemar membayar, khususnya dalam rezim hukum *Marine Biodiversity of Areas Beyond National Jurisdiction*. Prinsip pencemar membayar telah dielaborasi dan diberlakukan dalam rezim hukum laut internasional, tetapi khusus untuk wilayah luar yurisdiksi nasional pemberlakuannya masih terbatas. Saat ini, proses negosiasi draft *International Legally Binding Instrument 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* (ILBI) masih berlangsung dan apabila diberlakukan kelak pasti akan menimbulkan perubahan pada rezim hukum laut internasional.

Penelitian hukum dalam Tesis ini merupakan penelitian hukum dengan metode normatif yang bersifat deskriptif, dimana penjelasan mengenai penerapan prinsip pencemar membayar sejauh ini dalam rezim hukum di wilayah luar yurisdiksi nasional akan ditekankan. Adapun sumber data bagi penelitian berasal dari data sekunder yang meliputi bahan hukum primer, sekunder dan tersier. Analisis berdasarkan sumber data dilakukan dengan menggunakan metode kualitatif.

Berdasarkan penelitian yang telah dilakukan, Penulis menemukan bahwa prinsip pencemar membayar telah diterapkan dalam masing-masing rezim hukum laut bebas dan Area untuk kegiatan pemanfaatan di wilayah tersebut. Sayangnya, dalam konteks keanekaragaman hayati belum ada rezim hukum yang mengatur di kedua wilayah luar yurisdiksi nasional tersebut. Naskah ILBI yang turut memasukkan prinsip pencemar membayar sebagai salah satu prinsip umum sehingga sangat dimungkinkan untuk penerapan prinsip pencemar membayar dalam rezim hukum *Marine Biodiversity of Areas Beyond National Jurisdiction*. Penerapan prinsip dalam rezim hukum akan menimbulkan dampak dari segi pertanggungjawaban negara, risiko perselisihan-perselisihan yang mungkin timbul, serta pengaturan lebih lanjut terkait substansi naskah ILBI supaya prinsip pencemar membayar dapat berlaku efektif.

Kata kunci: *prinsip pencemar membayar, Marine Biodiversity of Areas Beyond National Jurisdiction, ILBI, UNCLOS, wilayah luar yurisdiksi nasional*

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THE IMPLEMENTATION OF POLLUTER PAYS PRINCIPLE IN THE LEGAL REGIME OF MARINE BIODIVERSITY OF AREAS BEYOND NATIONAL JURISDICTION

ABSTRACT

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This study aims to explain how is the implementation of polluter pays principles, specifically in the legal regime of Marine Biodiversity of Areas Beyond National Jurisdiction. Polluter pays principle have been elaborated and applicated in the law of the sea regime, but for areas beyond national jurisdiction, the application is still limited. The negotiation of International Legally Binding Instrument 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 (ILBI) still ongoing until recently, and when it's enacted, there would be adjustments even though it has been emphasized that ILBI would not undermine the existing regulations.

The research uses normative legal research with descriptive method of explanation, whereas where the explanation regarding the application of the polluter pays principle so far in the legal regime in areas outside national jurisdiction will be highlighted. The source of data for research was obtained from secondary data which includes primary, secondary and tertiary legal materials. The data were arranged and analysed using qualitative analysis method.

Based on the research, it's found that the polluter pays principle has been applied in the regime of both high sea and Area, especially for the utilization of its sources. Unfortunately, in the context of marine biodiversity, there is no legal regime that regulates both areas, which were outside the national jurisdiction. The ILBI includes the polluter pays principle as one of the general principles so it's possible to apply the polluter pays principle in the legal regime of Marine Biodiversity of Areas Beyond National Jurisdiction. However, the application of the principles in this legal regime will affect several aspects in terms of state responsibility and liability, the risk of disputes that may arise, as well the further regulation regarding the ILBI so that the polluter pays principle could be effectively implemented.

Keywords: *polluter pays principle, marine biodiversity, ILBI, UNCLOS, areas beyond national jurisdiction.*

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