

KESESUAIAN OPERASIONALISASI *EQUITABLE SHARING OF FINANCIAL BENEFITS AND OTHER ECONOMIC BENEFITS* DALAM PEMANFAATAN AREA DENGAN PRINSIP *COMMON HERITAGE OF MANKIND UNCLOS 1982*

INTISARI

UNCLOS 1982 secara tegas mengadopsi prinsip *Common Heritage of Mankind* (CHM) sebagai dasar pengaturan rezim pemanfaatan sumber daya di dasar laut di luar batas yurisdiksi negara (*Area*). Konsekuensi dari dipilihnya prinsip CHM adalah adanya kewajiban untuk melaksanakan redistribusi hasil manfaat kepada seluruh umat manusia secara berkeadilan melalui pelaksanaan *equitable sharing of financial and other economic benefits* (EBS). Penelitian disertasi ini bermaksud untuk menguji kesesuaian operasionalisasi EBS di bawah rezim UNCLOS 1982 dengan norma-norma yang terkandung dalam prinsip CHM. Pengujian dilakukan untuk mengukur kesesuaian ketentuan operasionalisasi EBS dalam instrumen terkini guna melindungi kepentingan umat manusia sebagai penerima manfaat, terutama dengan mempertimbangkan tantangan operasionalisasinya di masa kini. Hasil pengujian diharapkan dapat berkontribusi dalam penyusunan kebijakan tindak lanjut untuk melindungi penerapan prinsip CHM dalam pemanfaatan *Area*.

Jenis penelitian yang dilakukan adalah penelitian normatif-empiris, dengan menganalisis norma-norma peraturan hukum internasional yang relevan dan juga praktik penerapannya di lapangan. Penelitian memanfaatkan data sekunder berupa bahan hukum primer, sekunder, dan tersier serta bahan non-hukum seperti publikasi resmi dan penelitian disiplin ilmu lainnya untuk menunjang aspek penelitian empiris. Data yang diperoleh dianalisis menggunakan pendekatan kualitatif untuk memperoleh jawaban penelitian mengenai operasionalisasi EBS dalam konteks pertambangan mineral di *Area*.

Hasil penelitian disertasi menemukan bahwa rezim operasionalisasi EBS telah mengalami pergeseran pasca disepakatinya UNCLOS 1982 yang cenderung bersifat degradasi terhadap pengutamaan kepentingan umat manusia. Namun demikian, pergeseran tersebut didasarkan pada keperluan untuk menjamin bahwa aktivitas pemanfaatan *Area* dapat berjalan sehingga memunculkan manfaat untuk kemudian dibagikan kepada umat manusia. Hasil analisis menemukan bahwa norma peraturan pelaksanaan EBS secara umum masih berkesesuaian dengan prinsip CHM, meskipun telah mengalami degradasi sejak disepakatinya UNCLOS 1982. Kesimpulan demikian didasarkan pada temuan bahwa EBS dapat dilaksanakan secara fleksibel dan dapat dikatakan bersesuaian dengan prinsip CHM selama tidak menyimpangi pilar prinsip CHM. Meskipun hasil pengujian menemukan demikian, penelitian juga menemukan adanya potensi tantangan pelaksanaan EBS di masa mendatang yang dapat menjadi hambatan dalam pemenuhan pilar prinsip CHM yang perlu ditindaklanjuti.

Kata Kunci: *Common Heritage of Mankind, Equitable Benefit Sharing, Pertambangan Dasar Laut, UNCLOS 1982*

***THE COMPATIBILITY OF THE OPERATION OF EQUITABLE SHARING OF
FINANCIAL BENEFITS AND OTHER ECONOMIC BENEFITS IN AREA'S
UTILIZATION WITH THE COMMON HERITAGE OF
MANKIND PRINCIPLE UNDER UNCLOS 1982***

ABSTRACT

UNCLOS 1982 adopted the principle of Common Heritage of Mankind (CHM) as the basis for regulating utilization of resources on the seabed outside the state jurisdiction (Area). The consequence of adopting the CHM principle is the obligation to equitably redistribute the benefits arising from the activities carried out in the Area to all mankind through the implementation of equitable sharing of financial and other economic benefits (EBS). This dissertation intends to examine the compatibility of the current EBS operationalization regime under UNCLOS 1982 with the norms of the CHM principle. The examination is intended to measure the compatibility of the provisions regulating EBS to safeguard the interests of mankind. The results are expected to contribute to the formulation of follow-up policies to protect the application of CHM principle in the utilization of the Area.

The research is both normative and empirical. It analyzes the norms of relevant international legal regulations and their implementation. The research utilizes secondary data which consists of primary, secondary, and tertiary legal materials as well as the relevant non-legal materials, including official publication and scholarly works from various academic disciplines to support the empirical aspect of this research. The data obtained were analyzed using a qualitative approach to obtain the answers to the research questions regarding the operationalization of EBS in the context of deep seabed mining in the Area.

The research found that there are shifts in the operationalization of EBS post-UNCLOS 1982 which compromise the interest of mankind. Nevertheless, these shifts were done in order to ensure the feasibility of the utilization activities and thus allowing benefits to arise and to be shared. The analysis concluded that the norms regulating EBS are still in accordance with the CHM principle, although they have been degraded compared to the original version under UNCLOS 1982. This conclusion is based on the findings that EBS can be implemented flexibly and remains compatible with the CHM principle as long as it does not contradict the tenets of CHM principle. Notwithstanding this conclusion, the study also found potential contemporary challenges in implementing EBS that must be mitigated that could become obstacles in fulfilling the tenets of CHM principle.

Keywords: *Common Heritage of Mankind, Deep Seabed Mining, Equitable Benefit Sharing, UNCLOS 1982.*