

ESTABLISHING LEGAL CONSTRUCT OF PRECAUTION WITHIN INDONESIA'S LAW ON THE AREA'S DEEP SEABED MINING

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ABSTRACT

As the discussion on Indonesia's engagement upon Area's Deep Seabed Mining (DSM) is being resuscitated through Presidential Decree 80 Year 2023, this Legal Research examines the regulation with an emphasis on the construction of the precaution concept. As the environmental significance of DSM is recognized, the implementation of the concept within the legal framework determines whether the practices manifest harm or good for Indonesia. This Legal Research intends to answer two questions: 1) How does Indonesia establish the legal construct of precaution within the national regulation on Deep Seabed Mining in the Area?; and 2) 2. How does the legal construct of precaution in Indonesia's regulation on Deep Seabed Mining in the Area being analysed through the Triple Bottom Line Theory?

As normative legal research, this writing primarily utilized secondary data. The data utilized within this writing are relevant legal instruments, nationally and internationally, supplemented with numerous relevant literatures. The approach employed within this research are the statute approach and the conceptual approach.

This Legal Research concluded that the construct of precaution within Indonesia's law on DSM is conceived as a principle. While the conception differs from international law, the implementation within the Indonesian legal framework remained consistent with its national law history and did not indicate incompatibility. Even so, the "precautionary" employed can be deemed to be lax. Additionally, the employment of lax "precautionary" measures deprived the sustainability as it is being assessed through the triple bottom line theory.

Keyword: Deep Sea Mining; Precaution; Indonesia; Area.

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INTISARI

Dengan adanya diskusi kembali terkait keterlibatan Indonesia terhadap Pertambangan Bawah Laut (DSM) di Area melalui Peraturan Presiden Nomor 80 Tahun 2023, tulisan hukum ini meninjau mengenai regulasi tersebut selagi focus terhadap penerapan konsep "kehati-hatian". Menyadari signifikansi DSM terhadap lingkungan, implementasi "kehati-hatian" dalam ketentuan hukum menentukan dampak dari praktik tersebut. Penulisan hukum ini bertujuan untuk menjawab dua pertanyaan: 1) bagaimana Indonesia mengkonstruksi "kehati-hatian" dalam ketentuan hukum positif terkait DSM di Area; dan 2) bagaimana konsep "kehati-hatian" dalam hukum Indonesia terkait DSM di Area apabila ditinjau dari kaca mata triple bottom line?

Sebagai penelitian hukum normatif, tulisan ini menggunakan data sekunder. Data yang digunakan dalam tulisan ini berupa ketentuan hukum yang relevan, nasional maupun internasional, beserta berbagai literatur terkait. Pendekatan yang digunakan adalah statute approach dan conceptual approach.

Penelitian ini berkesimpulan bahwa "kehati-hatian" dalam hukum Indonesia terkait DSM ditempatkan sebagai suatu prinsip. Meskipun penempatan tersebut berbeda dengan hukum internasional yang menempatkannya sebagai pendekatan, implementasi dalam hukum nasional konsisten dengan sejarah hukum nasional dan tidak menunjukkan ketidakserasian. Akan tetapi, penerapan "kehati-hatian" bersifat lemah. Terlebih lagi, penerapan "kehati-hatian" yang lemah melemahkan aspek keberlanjutan ditinjau dari teori triple bottom line.

Kata Kunci: *Pertambangan Bawah Laut; Kehati-hatian; Indonesia; Area.*

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