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Implementation of the Principle of Common Heritage of Mankind According to the UN Convention on the Law of the Sea of 1982

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ABSTRACT

Common Heritage of Mankind is a principle in the International Law of the Sea system where the principle provides freedom of Natural Resources contained in the International Seabed or Seabed Area. The regulation of international law authorizes an international organization called the International Seabed Authority to carry out its role as supervision of the implementation of the principles of Common Heritage of Mankind in the International Seabed area. Article 136 of the International Convention on the Law of the Sea, Part XI of the Area states that " the area and its resources are the common heritage of mankind". In applying the principles of the Common Heritage of Mankind contained in Chapter XI UNCLOS 1982 was implemented under the Implementation Agreement 1994 which then established an international organization authorized to fully regulate and manage the resources that exist in the seabed and Deep Ocean where the common heritage of mankind on behalf of it acts.

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INTRODUCTION

The development of marine technology and the ability of countries to conduct exploration of marine resources, especially oil, attachment to the sea area became a trend in 1930. Thus, the international community decided to hold the codification of international law of the sea, as a result it took nearly 30 years to codify the provisions of international law of the Sea, beginning in 1958 when the convening of UNCLOS I, followed by the conference on international law of the Sea II (UNCLOS II) in 1960, followed by the conference on international law of the Sea III (UNCLOS III) , when the adoption of the International Convention on the law of the Sea (KHL 1982) or known as the United Nations Convention on the Law of the sea (UNCLOS 1982).

On December 17, 1970, the United Nations General Assembly passed two resolutions, namely the declaration of principles governing the seabed and subsoil thereof beyond the limits of national jurisdiction, which in principle regulates the Sea-Bed with the concept of Common Heritageof Mankind; and the decision to convene the Third United Nations Conference on the Law of the Sea or UNCLOS III which gave birth to the United Nation Convention on the Law of the Sea 1982 which became known as UNCLOS 1982.

Article 1 of the 1982 Convention on the law of the Sea states that "Area" means the seabed and ocean floor and subsoil therein, beyond the limits of national jurisdiction. Seabed that is outside the jurisdiction of the state in UNCLOS 1982 stipulated that the International Seabed area subject to international provisions is a common heritage of mankind (common heritage of mankind) and is reserved for future generations (Heryandi,2013). In the International Seabed Area, no country should claim the wealth on the seabed, its management is only carried out by an international body, the International Seabed Authority (ISBA).

METHOD

The method used in this study uses normative juridical method, which is research conducted by examining the facts and problems in the field related to the problems to be studied.So if the normative legal research method is chosen, the researcher certainly will not use quantitative methods in the study, the researcher uses qualitative.

RESULTS AND DISCUSSION

No branch of international law has undergone more revolutionary changes in the last four decades, and especially in the last decade and a half, than the law of the Sea and Maritime Highways. Final signing on December 10, 1982, in Montego Bay, Jamaica, by a large number of states (not less than 118 states) represented at the third United Nations conference on the law of the Sea 1973-1982 (UNCLOS) to draft a comprehensive international legal provision relating to the law of the Sea under the title of the United Nations Convention on the law of the Sea (J.G. Starke.2015).

The First United Nations Conference on the law of the Sea was held in Geneva from 24 February 1958 to 27 April 1958 and its tasks were contained in four conventions, namely the Convention on the Territorial Sea and auxiliary lines, the Convention on the High Seas, the Convention on Fisheries and Conservation of biological resources in the High Seas, and the Convention on the Continental Shelf.

The United Nations Convention on the Law of the Sea II was a convention held from March 17 to April 26, 1960. The convention was born in an attempt to address the unresolved issues after UNCLOS I. Then the UN General Assembly convened the 2nd Convention on the law of the Sea (UNCLOS II). This convention discussed the width of the Territorial Sea and additional fishing zones, but still failed to reach an agreement so that the convention needed to be held again (Wagiman,2016).

The third conference was held according to the' gentleman's agreement ' which stipulated that there would be no vote until all attempts to reach an agreement had failed. The outcome of the UN Convention on the Law of the Sea also represents a ' Package deal' (Edward Guntrip,2003).

The main innovation contained in the United Nations Convention on the Law of the Sea (Montego Bay 1982) is the concept of Common Heritage of Mankind. While other important new aspects of UNCLOS, such as the Exclusive Economic Zone, or other related regimes related to the protection of the marine environment, are the result of the evolution of the International Law of the Sea. The concept of Common Heritage of Mankind has a revolutionary character. This presupposes a third type of regime that differs between the former regime of sovereignty, applicable to the Territorial Sea, and Freedom, applicable to the High Seas (Tullio Scovazzi. 2007).

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The 1982 Convention on the law of the Sea defines the sea as the CMH, defining and allocating authority over important maritime zones (e.g. territorial seas, contiguous zones, Exclusive Economic Zones, High Seas. Continental Margin and deep seabed). The treaty addresses the boundaries of the Territorial Sea, its upper and lower parts of the sea, international navigation and Transit through various zones, as well as the conservation and management of biological resources. The Convention on the law of the Sea also includes a code of conduct focused on the protection of resources used for peaceful purposes. Responsibility for compliance, cooperation and technical assistance, and responsibility for damage (Mardianis,2016).

Arvid Padro Duta Besar Negara Malta menyetujui usulan perubahan Konstitusi Bangsa-Bangsa pada 17 Agustus 1967 yang akan bertentangan dalam perubahan konstitusi besar global Arvid Padro Menyetujui keputusan Majelis Umum " Deklarasi dan perjanjian tentang reservasi secara eksklusif untuk tujuan damai Dasar Laut dan dasar laut, yang mendasari laut di luar batas yuridiksi nasional saat ini dan penggunaan sumber dayanya untuk kepentingan umat manusia. Agar dimasukkan dalam agendanya (Monica Allen,1992).

At the end of 1970 the General Assembly adopted the so-called "Decraration of principles " by a vote of 108 in favour and none against with 14 abstentions. Intended as an international regime for the seabed area and the natural resources contained therein, the declaration stipulates that the Area and the natural resources contained therein constitute the Common Heritage of Mankind (Stephen Gorove,tt).

Contemporary with the General Assembly's "Decalaration of Principles " convening of the Third Law of the Sea Conference, the purpose of the conference was to create a uniform codification regime. Covers all aspects of the law of the Sea (Edward Guntrip,tt). But the main thing is the regulation of the regime of the deep sea bottom. The General Assembly through a resolution gives recognition to the Common Interest of Mankind on the management of the seabed and deep sea bottom areas for peaceful purposes (Stephen Gorove,tt).

An important development to note is Malta's proposal which has received support from other developing countries which has prompted the birth of UN General Assembly Resolution No. 2749 (XXV) of 1970 which states that (Didik Mohammad Sodik, 2016):

a. The seabed and ocean floor, and the subsoil therein, beyond the limits of national jurisdiction (hereinafter referred to as the Area), as well as the resources of the Area, are the Common heritage of mankind. (The seabed and the ocean floor of the subsoil beyond the limits of national jurisdiction are referred to as regions and the resources of the region are the common heritage of mankind)
b. The Area shall not be subject to annexation by any means by states or persons, natural or judicial, and no state shall claim or exercise sovereignty or sovereignty rights over any part thereof. (The Area shall not be subject to appropriation in any way by any state or person, natural or legal, and no state shall claim or exercise any sovereign right over any of its parts)
c. No state or person, natural or judicial shall clsim or exercise acquired rights with respect to the Area or its resources incompatible with the international legal regime to be established and the principles of this mineral declaration. (No state or person, natural or judicial being in the exercise of the right to acquire relations with its areas or resources incompatible with the international legal regime to stabilize and the principles of this declaration contain minerals)
d. All activities regarding the exploitation and exploration of the resources of the Area and other related activities shall be governed by the internationally recognized regime. (All activities related to the exploration of the region's resources and other related activities will be regulated by the international regime)

Although UNCLOS does not provide any definition of the principle of the Common Heritage of Mankind, two main characteristics can be identified. first, the Common Heritage of Mankind applies only to the International Seabed area. and its natural resources are defined as ' all solid, liquid, or gaseous mineral resources in situ in the Area or under the ocean floor. Including the area of polymetallic nodules. Secondly, it is necessary to understand on the basis of the functions assigned to it, the Common Heritage of Mankind is Universal. Designed to support the ultimate goal of achieving an egalitarian society. UNCLOS has determined that the delivery of these objectives is a shared responsibility (Marie Bourel dkk, 2016).

The area is one of the new positive international law of the Sea institutions, strictly speaking, it was only known after the entry into force of the 1982 United Nations Convention on the

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law of the Sea on November 16, 1994. The area or rather the seabed and the land beneath it, which lies outside the national jurisdiction of countries, began to receive serious attention in the second half of the Sixties, especially after the General Assembly intended to initiate the holding of an International Conference on the law of the Sea in order to establish a New Covenant on the law of the Sea to replace the 1958 Geneva Convention on the law of the Sea which was considered incompatible with the Times.

Article 137 of the United Nations Convention On the Law of the Sea 1982 provides an explanation of the legal status of the Area and the natural resources contained therein:

a. No state shall claim or exercise sovereignty or sovereignty over any part of the Area or its Resources, nor shall any state or natural juridical person apportion any part thereof, no such claim or exercise of sovereignty or sovereign rights nor such apportionment shall be reconsidered. No state shall claim or exercise its sovereignty or sovereign rights over any part of the Area and the natural resources contained therein. Nor shall any state or legal entity or person claim or exercise any sovereignty or sovereign right or act of such ownership to be recognized
b. All the rights in the resources of the Area are vested in mankind as a whole, on whose behalf the Authority shall act. These resources are not subject to alienation. The minerals recovered from the Area, however, may only be reallocated in accordance with this part and the rules, regulations and procedures of the Authority. The entire rights of the Natural Resources of the Area are vested in humanity as a whole, on whose behalf the authority acts. These natural resources are not subject to transfer of rights, however only the minerals contained in the area may be transferred in accordance with this chapter and its regulations. Rules and procedures of the authority.
c. No state or natural or juridical person shall claim, acquire or enforce rights with respect to the minerals recovered from the affected area in accordance with this part. Otherwise such claim or execution of such rights shall be reconsidered No state or legal entity or person shall claim, acquire or exercise any rights relating to the minerals contained in the Area except in accordance with this chapter otherwise any claim of acquisition or exercise of Rights shall not be recognized

In essence, Article 137 of the United Nations Convention on the Law of the Sea 1982 stipulates that the seabed area and the natural resources contained therein are not the national jurisdiction of any country, and no state, legal entity or individual may claim the seabed area and the natural resources contained therein and the management of this area can only be carried out by the authority and aims at the common interest of mankind.

The principle of Common Heritage of Mankind that applies in the international seabed area is different from the principle of Res Comunis that applies in the High Seas where the high seas are open to all countries in the world without interference from any country while the principle of Common Heritage of Mankind that applies in the International Seabed area cannot be used freely and openly even though the seabed itself is a common heritage of mankind. Towards its utilization and management, there is an international body formed based on UNCLOS itself, namely the International Seabed Authority, which is then the only international body that can manage International Seabed areas and management is aimed at the common interest of mankind. For the first time in the history of the development of international law of the Sea a regime based on the management of natural resources by an international organization established on the basis of the world. The Common Heritage of Mankind is a third-choice concept of the 'tertium genus' that applies to certain types of natural resources located within a particular marine region. The Common Heritage of Mankind does not replace the previous regime of sovereignty or freedom over the remaining natural resources and the remaining sea space, but it provides a completely innovative and much more equitable approach (Tullio Scovazzi,tt).

The principle of Common Heritage of Mankind is an important element of UNCLOS. It applies exclusively in relation to the regulation and management of natural resources that are outside the limits of national jurisdiction. As with other principles of international law, the context within the principles of the Common Heritage of Mankind has evolved and the importance of understanding its philosophy, its changes and more are the challenges faced today for its effective implementation. Within the framework of the law of the Sea the introduction of the Common principle of the Heritage of Mankind is marked by many ups and downs. The increase is more to the discovery in the field of theory, on the contrary, the decline is found

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in the field of practical implementation (Erick Franckx. 2010).

In conclusion, that the concept of the Common Heritage of Mankind regime proposed to be applied to the seabed and Ocean Floor areas that are outside the national jurisdiction of a country is not a current legal principle but only a reflection of political aspirations and at best, moral commitment and does not imply a value judgment de lege ferenda (Stephen Gorove,tt).

Only in relation to the seabed can it be said that the principle of CHM is similar to Jus Cogens given the fact that Article 311/6 of the 1982 Convention states that no amendments will be made to the "basic principle of CMH" this means that after 1994, the essence of the concept, namely non-approriation and international management has been accepted rather than the contrived idea of CHM in the 1970s. The core of the CHM has also become part of customary international law for space (Kemal Baslar, 2016).

In order for this principle of the common heritage of mankind to be realized, it is necessary to establish international cooperation taking into account the low level of ability of developing countries to participate in mining activities in the region. The transfer of technology in this activity is absolutely necessary in order to equalize the waves of economic development of countries in the world. The principles of international law that are the basis for its implementation are the principles of International Cooperation for development (International Cooperation for the development of developing countries) and the right to benefit from science and technology (the right to use science and technology).

CONCLUSION

The principles of international law that are the basis for applying the principles of common heritage of mankind are the principles of realizing international cooperation for the development of developing countries and the right to utilize science and technology The common heritage of mankind is a legal principle that applies to three areas, namely Space and other celestial bodies (Outer Space and Moon Treaty), the International Seabed Area (Chapter XI of the United Nations Convention on the Law of the Sea and Agreements 1994 UNCLOS), and the Antarctic continent (Antarctic Treaty).

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