

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

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ABSTRACT: Maritime security threats take on various forms, ranging from piracy and armed robbery, smuggling via sea (including narcotics, arms, and human trafficking), global climate change, cargo theft, to the emerging issue of maritime terrorism. While piracy and armed robbery are significant concerns, maritime terrorism poses a comparably serious security challenge. Although terrorism and armed robbery are distinct phenomena arising from different motives, their characteristics often overlap. This overlap has led to misconceptions about these concepts and their threats to the maritime domain. Piracy and maritime terrorism share several definitional similarities but also exhibit notable distinctions. The primary difference lies in their motives: piracy is associated with personal financial gain, whereas maritime terrorism aims to achieve political objectives. The second distinction pertains to the methods employed. Piracy generally involves basic tactics, such as boarding vessels and stealing valuable goods, often accompanied by the use or threat of violence. Conversely, maritime terrorism may incorporate these basic tactics but distinguishes itself through its heightened level of violence, intended to attract global attention. The ultimate goal of maritime terrorism is to secure strategic political advantages. Maritime terrorism encompasses a broad scope, as it can occur across various contexts: *sea-to-sea*, *sea-to-land*, or *land-to-sea*. Consequently, it is imperative for Indonesia to enact specific legislation addressing maritime terrorism. The existing anti-terrorism laws are deemed insufficient to combat the complexities of maritime terrorism effectively. Dedicated legislation would provide the necessary legal framework to address this multifaceted issue comprehensively.

KEYWORD: Piracy, Armed Robbery, Maritime Terrorism, Indonesian Waters

A. INTRODUCTION

Indonesia is an archipelagic state situated between the Pacific Ocean and the Indian Ocean, as well as the Asian and Australian continents. Its geographically strategic location inevitably subjects Indonesia to external influences. However, this strategic position also makes Indonesia vulnerable to external threats and frequently faces security challenges, particularly concerning maritime border issues, where transnational crimes often occur.

In its development, *transnational crimes* are currently regarded as one of the serious threats to global security. At the multilateral level, the concept used is *Transnational Organized Crimes* (TOC), which aligns with the international legal instrument agreed upon in 2000, namely the *United Nations Convention on Transnational Organized Crime* (UNTOC).¹

In the past, forms of transboundary crimes were very limited. One of the oldest recorded transnational crimes is piracy (*piracy jure gentium*), which has been known since humanity began using the seas as a means of communication between nations and countries. This type of crime then evolved to include offenses such as smuggling, illicit drug trafficking, and money laundering. In fact, terrorism is now also categorized as a type of transnational crime.²

Terrorism, as an international crime, has transcended national boundaries in terms of its location, consequences, and objectives. The international nature of terrorism encompasses individuals, states, and objects that exist not only within a country but also beyond its borders. This characteristic qualifies terrorism as a transnational crime or *transnational organized crime* (TOC).³

¹ Mahmud Syaltout, *Laporan Akhir Kompendium Hukum Tentang Kerja Sama Internasional Dibidang Penegakan Hukum*, Hal. 8. Diakses melalui https://www.bphn.go.id/data/documents/kpd_-2012_3.pdf.

² Romli Atmasasmita, *Dampak Ratifikasi Konvensi Transnational Organized Crime* (TOC), Jakarta, Badan pembinaan hukum nasional departemen kehakiman dan HAM RI, 2004, Hal 2.

³ Aulia Rosa Nasution, *Terorisme Sebagai Kejahatan Terhadap Kemanusiaan Dalam Perspektif Hukum Internasional Dan HAM*, Jakarta, Kencana Media Group, 2012. Hal 133

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

The rise in transnational organized criminal activities worldwide has raised significant concerns, prompting the international community to heighten legal awareness and take immediate action to prevent, combat, and eradicate such transnational and organized crimes.⁴ Particularly, the issue of piracy or ship hijacking at sea has become a primary concern for Indonesia.

Piracy still occurs in the high seas, taking place along strategic routes, including international trade routes referred to as international waters.⁵ When ships passing through these routes carry valuable goods or items, they naturally become targets for pirates to commit crimes such as theft or holding crew members hostage to demand ransom from the ship's owners.⁶ Areas of waters that are particularly dangerous for piracy and armed robbery crimes include the Somali coast, the Strait of Malacca, the Central African offshore, the South China Sea, and others.

International law distinguishes the terms piracy and sea/armed robbery. Piracy is defined as an unlawful act occurring on the high seas through violence or unlawful detention conducted for personal gain. Meanwhile, crimes occurring in territorial waters are referred to as sea/armed robbery.⁷ Efforts to address such crimes impact the jurisdictional authority (jurisdiction) that applies.

In a case that occurred on March 26, 2016, there was a piracy/hijacking of ships and the hostage-taking of 10 crew members of the Indonesian Tug Boat *Brahma 12* and Tug Boat *Henry* in the waters around the Sulu Sea in the Sulu Archipelago, Southern Philippines. These ships were hijacked by a group known as Abu Sayyaf. Both vessels were transporting 7,000 tons of coal and carrying 10 Indonesian crew members.⁸ Not stopping there, from November 2016 to January 2017, around 7 Indonesian fishermen working on Malaysian fishing boats were kidnapped. This group not only carried out their actions in the Philippines but also committed acts of violence and abductions in neighboring countries, such as Malaysia and Indonesia.⁹

This issue raises the question of what kind of protection the government provides to its citizens who are in the territory of another country.¹⁰ These incidents are very concerning and frightening for the crew members and their families, particularly regarding the safety of Indonesia's maritime navigation. Crew members certainly require protection and safety guarantees from the Indonesian government, which are already stipulated in the Indonesian constitution.

Selat Malaka is one of the nine strategic straits that form some of the busiest shipping lanes in the world. These nine straits include:

1. The *Bab-el-Mandeb* Strait, which connects the Red Sea and the Arabian Sea.
2. The *Bosporus* Strait, which connects the Black Sea and the Sea of Marmara.
3. The *Dardanelles* Strait in Turkey.
4. The *Dover* Strait that connects the *English Channel* with the North Sea.
5. The *Hormuz* Strait that connects the Oman Peninsula with the Arabian Sea.
6. The Strait of *Gibraltar* that separates Europe and Africa.
7. The *Suez Canal* in Egypt.
8. The *Panama Canal* in the Americas.
9. The Strait of *Malacca*, which separates the Malay Peninsula from the island of Sumatra, Indonesia.¹¹

Currently, the Strait of Malacca holds significant importance for global trade. This is due to the fact that the shipping traffic passing through the Strait of Malacca is estimated to be around 70,000 vessels annually, and it is predicted by some experts to double in the next ten years.¹² For illustration, the travel time for commercial ships from the Middle East, which is rich in oil, to

⁴ M Iman Santoso, *Perspektif Imigrasi Dalam United Nation Convention Against Transnational Organized Crime*, Jakarta: Perum Percetakan Negara RI, 2007. Hal 179.

⁵ Utami, A. D., Muslimah, S., & Kusumo, A. T. S. (2014). Yurisdiksi Internasional Penanggulangan Perompakan Di Laut Lepas. *Yustisia Jurnal Hukum*, 3(1), 97–104. <https://doi.org/10.20961/yustisia.v3i1.10130>

⁶ Rahman, A. F. N., & Susiatiningsih, R. H. (2019). Memberantas Kejahatan Transnasional di Jalur Segitiga Asia Tenggara, Wilayah Perairan Laut Sulu. *Journal of International Relations*, 5(4), 789–796. Retrieved from <https://ejournal3.undip.ac.id/index.php/jihi/article/view/25086>

⁷ Utami, A. D., Muslimah, S., & Kusumo, A. T. S. (2014). Yurisdiksi Internasional Penanggulangan Perompakan Di Laut Lepas. *Yustisia Jurnal Hukum*, 3(1), 97–104. <https://doi.org/10.20961/yustisia.v3i1.10130>

⁸ *Dua Kapal Indonesia Dibajak Di Filipina 10 WNI Disandera*, diakses melalui http://www.bbc.com/indonesia/berita_indonesia/2016/03/160329_indonesia_kapal_dibajak_filipia.

⁹ I Made Adi Lesmana et al., *Asean Way Sebagai Sebuah Paradoks: Kasus Terorisme Kelompok Abu Sayyaf*, jurnal penelitian Fisip Universitas Udayana, Hal. 2.

¹⁰ Vidianditha, K. R., Mangku, D. G. S., & Yuliartini, N. P. R. (2020). Perlindungan Hukum Yang Diberikan Oleh Indonesia Kepada WNI Sebagai Pelaku Perompakan Kapal (Studi Kasus: Perompakan Kapal Orkim Harmony Milik Malaysia). *Jurnal Komunitas Yustisia*, 3(1), 260–269. Retrieved from <https://ejournal.undiksha.ac.id/index.php/jatayu/article/view/24025>

¹¹ Maulidy, A. I. (2011). Kerjasama keamanan Indonesia, Malaysia, Singapura dalam mengatasi masalah pembajakan di perairan Selat Malaka 2004-2009

¹² Rusli, Mohd Hazmi Mohd. "Straits of Malacca and Singapore: pride of the Malay archipelago, priceless maritime heritage of the world." *Jurnal Hadhari* (2012): 109-127.

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

Japan at a standard speed of 12.5 knots is around 22 days when passing through the Strait of Malacca. In comparison, if ships were to take the longer route through the Sunda Strait or Lombok Strait, the travel time would be around 25 days.

Abdul Halim, Secretary-General of the Coalition for Justice in Fisheries, in "Selat Malaka dalam Momentum 2014," quoting Abdul Halim (2013) from Cleary and Chuan (2000: 133-4), highlights the high intensity of global trade through the Strait of Malacca by mentioning that around 200 cargo ships and 150 tankers pass through the waters of the Strait of Malacca daily. A.A. Banyu P (2001:23-24), quoted by Gugus Wahyu S Utomo and Soepadi (2013) in the application of law regarding piracy and armed robbery in the Strait of Malacca, states that if insecurity occurs in the waters of the Strait of Malacca, the extraordinary negative impact will be felt in terms of global economic instability. Therefore, the Strait of Malacca, which functions as a SLOC (*Sea Line of Oil Trade*) and SLOC (*Sea Line of Communications*) for the United States, Japan, and China, is now seen as a battleground for the interests of every country in the world. The United States, Japan, and China are all targeting the Strait of Malacca, which is the busiest strait in the world after the Strait of Hormuz.

The Strait of Malacca, as a SLOC, is a vital oil transport route that carries crude oil, the primary energy source for the world, from the Middle East to mainland Asia. For instance, the significance of the Strait of Malacca as a global energy route is evident in that 80% of China's oil imports pass through the Strait of Malacca (A.A. Banyu P (2001:23-24)). In 2005, Chinese President Hu Jintao stated that China has a high dependency on the security of shipping routes in the waters of the Strait of Malacca. This dependency is not only based on what is called *Economic Security* but also on *Geopolitical Security*. Therefore, the security of shipping lanes in the Strait of Malacca is crucial for the continuation of China's economy. To secure this energy route, China developed the "String of Pearls" concept, a strategic plan to safeguard its energy routes stretching from the South China Sea, through the Strait of Malacca, the Indian Ocean, and up to the Middle East, by establishing logistics bases along this route.

As a SLOC, the United States has a significant interest in the Strait of Malacca. Hillary Clinton (2013), in an article for Foreign Policy titled "America's Pacific Century," stated, "The future of politics will be decided in Asia, not Afghanistan or Iraq, and the United States will be right at the center of the action". In the article, it is stated that the key to global politics lies between the Pacific Ocean and the Indian Ocean, with the Strait of Malacca being central to this. Amelia Rahmawaty (2015) in the FKPM Journal titled "Indonesia di tengah dinamika Regional (Indonesia in the Midst of Regional Dynamics)" writes that the significance of the Strait of Malacca has driven the United States to take a leading role in controlling the waters of the Strait, partly due to its rivalry with China. Moreover, the Strait of Malacca is also viewed by the United States as a strategic route for the projection of naval fleets from major maritime nations for forward presence and global engagement worldwide. However, the United States and its allies do not have sufficient justification to control or even militarily dominate the Strait of Malacca, leading to suspicions that the United States and its allies are cultivating the narrative that the Strait of Malacca and the surrounding Indonesian waters are unsafe due to the increasing activities of piracy and terrorism.

The narrative regarding piracy in recent years has been dominated by attacks in the Gulf of Aden carried out by Somali pirates. However, piracy has also become a significant issue in the Strait of Malacca, particularly in Indonesia, peaking in the year 2000 as a result of the Asian Financial Crisis.¹³ Before 1989, the Strait of Malacca was relatively safe, with an average of only seven reported cases of piracy and armed robbery each year.¹⁴ In 1989, the number of cases increased to 28 and further rose to 37 cases in 1999.¹⁵ In 2000, the reported acts of piracy and attempted piracy reached 112 cases, the highest ever recorded.¹⁶ Incidents decreased to 60 cases in 2004; however, Southeast Asia, particularly the Strait of Malacca and the South China Sea, still accounted for one-third of the 325 reported cases of piracy and armed robbery against ships worldwide that year.¹⁷

The International Chamber of Commerce's International Maritime Bureau recorded a sharp increase in pirate attacks on ships in Southeast Asian waters, with the highest number of incidents occurring in Indonesian waters.¹⁸ Based on its data, Southeast Asia ranks highest in piracy cases, which is considered alarming. Indonesia, known as a seafaring nation, contributes the largest number of piracy incidents globally, particularly in Southeast Asia. Of the 141 piracy cases in Southeast Asia, 100 occurred in Indonesia.¹⁹ The same percentage was observed in 2015. Out of 190 piracy cases worldwide, the majority occurred in Indonesian

¹³ Robert C. Beckman, Carl Grundy-Warr and Vivian Louis Forbes, *Acts of piracy in the Malacca and Singapore Straits Maritime Briefing* (Durham: IBRU, 1994) halaman 1.

¹⁴ International Maritime Organization, Focus on IMO: *Piracy and Armed Robbery at Sea* (2000) <https://www.files.ethz.ch/isn/115178/entire.pdf>.

¹⁵ *Ibid*.

¹⁶ The IMO Annual Report 2004 (International Maritime Organization) http://www.imo.org/includes/blastDataOnly.asp/data_id%3D12132/64.pdf diakses pada tanggal 14 Maret 2024.

¹⁷ Michael Richardson, 'Aiming a Shot Across the Bow', The Straits Times (Singapore), 25 Mei 2005, <http://www.iseas.edu.sg/viewpoint/mr25may05>.

¹⁸ Erdy Nasrul, "Perompakan Di Laut Indonesia Tertinggi," [republika.co.id](https://republika.co.id/berita/ob2goo21/perompakan-di-laut-indonesia-tertinggi), 2016, <https://republika.co.id/berita/ob2goo21/perompakan-di-laut-indonesia-tertinggi>.

¹⁹ *Ibid*

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

waters. This data highlights Indonesia as both a haven and a target for pirates. Learning from Somalia, the decline in piracy cases in East Africa was due to improved capacity and capability in maritime law enforcement by the state and government. Indonesia has ratified *UNCLOS*; however, it is not fully contextual, as the *United Nations Convention on the Law of the Sea (UNCLOS 1982)* only regulates piracy occurring on the high seas.

For Indonesia, this issue has been well recognized, and regulations have been established in Indonesian legislation alongside provisions on piracy as stipulated in the Criminal Code (Articles 338-451). Furthermore, Indonesia has enacted Government Regulation in Lieu of Law (Perpu) No. 1 and No. 2 of 2002 concerning the eradication of terrorism crimes, which also include acts of terrorism in maritime areas. These regulations were later ratified into Law No. 15 and No. 16 of 2003 and subsequently amended to Law No. 5 of 2018, which remains in effect today.

The Indonesian Criminal Code (KUHP) regulates acts of piracy and hijacking at sea, which, according to the KUHP, still fall within the scope of traditional maritime law. The articles in the KUHP addressing piracy are found in Articles 338 to 451. The KUHP does not use the term "piracy" but instead uses "hijacking," which is categorized into four types based on the location where the hijacking occurs: hijacking at sea (*zee-roof*), hijacking near the coast (*kust-roof*), hijacking on the shore (*strand-roof*), and hijacking in rivers (*river-roof*).²⁰ Meanwhile, in Government Regulation in Lieu of Law (Perpu) No. 1 of 2002 (which became Law No. 5 of 2018), Article 3 Paragraph 1 explains that the regulations regarding terrorism also apply to those intending to carry out terrorist acts not only in Indonesia's land territory but also in its waters.

The eradication of piracy, which is an international crime, adheres to the principle of universal jurisdiction. All countries have jurisdiction to prosecute perpetrators of such international crimes, regardless of the origin or nationality of the perpetrators or the victims. This notion fosters the view that such crimes are offenses against all of humanity, alongside a shared commitment to eradicating piracy, thereby necessitating a global consensus among all nations.

Based on the background above, the research problem can be formulated as follows: Can the act of armed piracy against ships be categorized as Maritime Terrorism in the Indonesian waters and how is the enforcement of sovereignty and law against armed piracy crimes in the Indonesian waters.

B. DISCUSSION

1. Legal Aspects of Piracy and Armed Robbery at Sea Against Ships

In the field of crime prevention and eradication, the development and establishment of a legal framework related to such crimes form the basis of all actions in addressing these issues. Indeed, adhering to the maxim *nullum crimen nulla poena sine lege* (no crime, no punishment without law), it becomes imperative to have laws in place to address the crime in question. An event is only considered a crime if it is defined as such by law.²¹ In the process, a number of legal issues related to the crime need to be identified, and consistency with international law and the national legal system must be considered.

Considering the manifestations of maritime piracy and armed robbery against ships and addressing them from a legal perspective, it becomes necessary to examine the following issues to determine the legal mechanisms that must be applied to establish, develop, or enhance any laws related to these crimes, such as: the definition of offenses, criminalization, jurisdiction, and enforcement actions.

Definition of offenses: This describes the actions, types of actions, and elements that constitute an offense. In the case of maritime piracy and armed robbery against ships, the definition aspect holds particular significance. It has been a subject of extensive debate among legal scholars since the emergence of these two phenomena.

Criminalization: It involves rendering an offense illegal or ensuring it is designated as a crime and providing adequate penalties. When an act is criminalized, it enables the prosecution of potential offenders. Thus, criminalization is a critical process in the legal handling of maritime piracy and armed robbery against ships.

Jurisdiction: This defines the power and authority to adjudicate specific cases (who has the prevailing authority) and to bring an individual to court to assess their rights (in personam jurisdiction). Establishing jurisdiction is another highly significant issue in addressing piracy and armed robbery against ships, as it appears to be the primary matter a court examines before deciding on any case.

Enforcement measures: These consist of all processes and actions that enable the application of the law and ensure its compliance. Generally, this includes the arrest and search of suspected perpetrators and the seizure of any tools used to commit or

²⁰ Mustafa Djuang Harahap, *Yurisdiiksi Kriminal di Perairan Indonesia yang berkaitan dengan Hukum Internasional*, (Bandung: Alumni, 1983) halaman 119-120.

²¹ United Nations Office on Drugs and Crime, *Principles and framework for an international classification of crimes for statistical purposes*, Report of the UNODC/UNECE task force on crime classification to the conference of European statisticians, June 2012, Halaman 7.

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

facilitate the offense. When discussing the issue of enforcement measures, it is essential to clarify who holds the authority to enforce the law and how it should be carried out.

After establishing the various elements for analysis, international law and national legislation on maritime piracy and armed robbery will be reviewed in the subsequent chapters. Secondly, existing national legislation on this issue will be analyzed to propose improvements for more effective national laws. The ultimate goal is to have legislation aligned with international law while simultaneously integrating seamlessly with the national legal system to operate without obstacles.

1) Piracy and Armed Robbery Against Ships in International and National Law

It is crucial to consider international law in the process of developing or improving national legislation. Indeed, international law can serve as a source for national legislation. However, the consistency of national legislation with international instruments often faces challenges due to a lack of harmonization among regulations.

1.1. Piracy and Armed Robbery at Sea under International Law

In international law, piracy and armed robbery at sea have been regulated through international treaties and recommendations. Several international instruments contain specific provisions related to piracy and armed robbery against ships, while others may be adapted or used in addressing these crimes due to their relevance to offenses similar to or related to piracy and armed robbery against ships. The following analysis examines the elements of international treaties and recommendations that have contributed to advancements in combating these two crimes, intending to identify legal elements necessary for the development of national legislation.

Definition in International Law

When looking at international treaties, agreements, and recommendations related to maritime piracy and armed robbery against ships, there seem to be two approaches that can be taken in defining these terms. The first approach is the zonal approach, and the second is the general approach.

a) Zonal Approach

The zonal approach consists of defining maritime piracy and armed robbery against ships by emphasizing the location where the act occurs as the primary criterion of the definition, alongside other elements that make up the act. As a result, it differentiates the denomination of the act depending on where the maritime zone is located.

➤ Maritime piracy

A crime is defined as piracy when it occurs on the High Seas, in the Exclusive Economic Zone (EEZ), or in a place outside the jurisdiction of any State in accordance with the 1982 Law of the Sea Convention (UNCLOS) and the 1958 High Seas Convention, which contain almost identical provisions on this issue. Article 101 of UNCLOS defines maritime piracy as consisting of the following acts:

- (a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or passengers of a private ship or aircraft, and directed at:
 - (i) on the high seas, against another ship or aircraft, or against persons or property on board such ship or aircraft;
 - (ii) against a ship, aircraft, persons, or property in a place outside the jurisdiction of any state²²;
- (b) any voluntary participation in the operation of a ship or aircraft with the knowledge that it is being used as a pirate ship or aircraft;
- (c) any act of instigating or intentionally facilitating any of the acts described in subparagraphs (a) or (b).

Despite the fact that the definition does not specify the EEZ, but only the high seas and places outside the jurisdiction of any state, for the EEZ based on Article 58(2) of UNCLOS, which indicates that Articles 88 to 115 (regarding the high seas) apply to the EEZ as long as they are not in conflict with the provisions regarding this maritime zone. Since coastal states only exercise sovereign rights over living and non-living resources in the EEZ, this makes the provisions on piracy applicable to this maritime zone.

Regardless of the geographic location criteria, the definition mentioned above requires the fulfillment and combination of three other important parameters to qualify an act as maritime piracy: the type of action, the two-ship/aircraft rule, and the personal motive requirement. The type of actions covered by this definition include illegal violence, detention, or destruction, aiding in operations, and inciting or facilitating actions. The two-ship/aircraft rule calls for the presence of two ships or aircraft, one as the pirate ship/aircraft and the other as the victim ship/aircraft, to qualify the action as maritime piracy. Indeed, not only ships in the high seas, the EEZ, or places outside the jurisdiction of any state can be used to commit the act, but also aircraft, as long as the actions are directed at ships in the high seas,²³ The EEZ or places outside the jurisdiction of any State. However, following the wording of the maritime piracy definition, acts of piracy can also be directed against aircraft in the high seas. In this case, a hypothetical attack on

²² Dalam komentar Komisi Hukum Internasional (ILC) tentang draf artikel, makna "tempat di luar yurisdiksi Negara mana pun" adalah pulau *terra nullis* atau wilayah pantai yang tidak dihuni.

²³ United Nations, *Yearbook of the International Law Commission 1956, Volume II*, Documents of the 8th Session including the report of the Commission to the General Assembly, 1957, (New York: United Nations, 1957) Pasal 39, halaman.282.

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

an aircraft in the high seas can be considered²⁴ as well as in the EEZ and places outside the jurisdiction of any State. A pirate ship or aircraft is defined as a pirate ship that is under the main control of a person with the intent to commit acts of piracy as defined in Article 101 of UNCLOS.²⁵ Not only private ships or aircraft can be considered pirate ships/aircraft, but also warships, military aircraft, or government ships whose crews mutiny and engage in piracy can be regarded as such.²⁶ Therefore, in such cases, the actions are considered to be carried out by a private ship or aircraft. While UNCLOS defines pirate ships, it does not clarify what can be considered a ship. Whether a canoe or a small boat can be considered a ship or if it must be larger and have a powered propulsion system remains unclear. However, the *1988 Convention for the Suppression of Unlawful Acts of Violence against the Safety of Maritime Navigation* (hereinafter referred to as the SUA Convention), which applies in the context of piracy and armed robbery at sea as discussed further below, defines a ship as any vessel that is not permanently attached to the seabed, including motor-powered vessels, submarines, or other floating structures.²⁷ Based on the rule of two ships/aircraft, any action taken by the crew or passengers aboard a ship against the ship itself, or against persons or property on the ship, is excluded from being considered piracy at sea.²⁸ Similarly, actions taken in the high seas involving stowaways or individuals secretly boarding a ship in port are not considered piracy under the definition in UNCLOS. The requirement of a personal motive means that the ultimate purpose of the unlawful act must be personal in nature to qualify as piracy. This excludes actions taken for economic gain or for political purposes.²⁹ However, in the commentary by the *International Law Commission* (ILC), it was highlighted that the purpose of piracy (*animus furandi*) is not a prerequisite, and piracy can be committed for reasons such as disgust or revenge, not solely for personal profit. The fact that piracy must be for personal purposes distinguishes it from acts of terrorism, which are primarily aimed at public and political goals. Despite the complexities and potential limitations inherent in the definition of piracy, it remains a globally recognized definition due to the large number of countries that are parties to UNCLOS. Considering that piracy only occurs on the high seas and in the EEZ, it becomes problematic to classify actions similar to piracy that occur in territorial waters, archipelagic waters, and internal waters. This has been a major concern, especially when 61.8 percent of acts identical to piracy occurred in territorial waters in 1990, according to research by Dubner, while in 2000, attacks even occurred at docks or ports.³⁰ It was at that point that the concept of "armed robbery at sea" or "armed robbery against ships" emerged to fill the gap in the definition of maritime piracy.

➤ Armed Robbery against Ships and Armed Piracy at Sea

These acts are classified as "armed robbery against ships" or "armed robbery at sea" when committed in internal, territorial, or archipelagic waters. Several international recommendations and agreements recognize the concept of "armed robbery against ships" or "armed robbery at sea" as a complement to "maritime piracy." In various documents, the term "piracy and armed robbery against ships" is used together to cover all maritime zones when addressing this issue. *The United Nations General Assembly Resolutions* (UNGAR) and *United Nations Security Council Resolutions* (UNSCR) on piracy-related issues employ this terminology. Similarly, "armed robbery against ships" is referenced in the *Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia* (ReCAAP). It is used alongside the term "piracy" as defined in UNCLOS. The definition of "armed robbery against ships" is mentioned in the *International Maritime Organization* (IMO) documents, particularly in resolution A.1025(26) concerning the Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships. In paragraph 2.2 of the annex to this resolution, after referring to "Piracy" as acts defined in Article 101 of UNCLOS, "Armed robbery against ships" is defined as:

- (a) any unlawful act of violence, detention, or destruction, or the threat thereof, other than an act of piracy, committed for private ends and directed against a ship, or against persons or property on such a ship, within a State's internal waters, archipelagic waters, and territorial sea;
- (b) any act of inciting or intentionally facilitating an act described above.

The definition of "armed robbery against ships" includes all elements of "piracy" except that the act must occur in internal waters, archipelagic waters, or territorial seas and does not include the two-ship/aircraft rule.

²⁴ Satay, N., Nadan, C.B.E & Rosenne, S. (Eds.), *United Nations Convention on the Law of the Sea 1982: A commentary*, Volume III, Pasal 86 sampai 132 dan documentary Annexes, (The Hague: Martinus Nijhoff Publishers, 1995) halaman 201.

²⁵ Lihat UNCLOS, Pasal 103

²⁶ Lihat UNCLOS, Pasal 102

²⁷ Lihat Konvensi SUA, Pasal 1

²⁸ Jean Edmond Randrianantenaina, *Maritime Piracy and Armed Robbery against Ships: Exploring the Legal and The Operational Solutions. The Case of Madagascar*. Division for Ocean Affairs and the Law of the Sea Office of Legal Affairs, The United Nations New York, 2013, halaman 38.

²⁹ *Ibid.*

³⁰ Mejia, M., *Maritime Gerrymandering : Dilemmas in Defining Piracy, Terrorism and other Acts of Maritime Violence*, Journal of International Commercial Law Vol. 2, No.2 2003, Halaman 161.

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

General Approach

In contrast to the zone approach, the general approach proposes defining maritime piracy and armed robbery against ships not based on the location of the act but by adapting the definitions of these terms to include the provisions within the scope of "unlawful acts against the safety of maritime navigation" provided in the SUA Convention. Alternatively, it seeks alignment with the concept of "organized crime" as established in the *2000 United Nations Convention against Transnational Organized Crime* (referred to as OCC) or to interpret the terms based on the definition of "hostage-taking" provided in the *1979 International Convention against the Taking of Hostages* (Hostage Convention).

➤ **Maritime piracy and armed robbery against ships as unlawful acts against the safety of maritime navigation:**

The SUA Convention explains offenses in Article 3, listing unlawful and intentional acts, including maritime piracy and armed robbery against ships. Indeed, based on the zone-based definition and the manifestations of maritime piracy and armed robbery against ships, several acts outlined in Article 3 of the SUA Convention describe actions in the context of maritime piracy and armed robbery at sea, such as seizing or taking control of a ship through violence, threats, or other terrorist means, destroying or causing damage to the ship or its cargo, committing acts of violence against individuals on board the ship, injuring or causing the death of anyone through the commission or attempted commission of the aforementioned acts.³¹ Additionally, attempting or supporting the execution of such acts is considered an offense, as well as threatening an individual or person to do or refrain from doing any act in order to carry out any of the violations mentioned.³² It is recognized that piracy and armed robbery at sea can hinder maritime navigation safety. Despite the fact that the SUA Convention was created after the hijacking of the Italian-flagged vessel *Achille Lauro* in 1985³³ and therefore this convention was primarily designed to combat maritime terrorism, it is important to note that the term "terrorism" is only mentioned in the preamble of the Convention and does not appear again in its provisions. The SUA definition provides certain flexibility in the sense that it imposes restrictions regarding the presence of two ships and the purpose of each attack. Indeed, violations committed by anyone from within a ship are still considered violations under this convention. However, this convention does not apply to warships or government ships used as naval auxiliaries, for customs or police purposes, or for the mooring of ships.³⁴

➤ **Piracy at sea and armed robbery against ships as "organized crime":**

Pirates and armed robbers at sea typically prepare and carry out their attacks in groups of individuals. All actions are relatively coordinated, and each group forming different components of a single network acts in an organized and structured manner with the goal of acquiring a ship, property on board, or kidnapping for ransom. For this reason, piracy and armed robbery against ships can be viewed as organized crime. Indeed, the OCC provides a definition of "Organized criminal group" as a structured group³⁵ which consists of three or more active individuals, for a certain period of time, and acts in collaboration with the aim of committing one or more serious crimes³⁶ or offenses recognized by this convention to directly or indirectly obtain financial or other material benefits.³⁷ The offenses covered by the OCC include active or passive participation in organized criminal groups,³⁸ money laundering³⁹, corruption⁴⁰ and obstruction of justice.⁴¹ As a requirement for the offenses to be considered under this convention, the actions must be transnational offenses, meaning they are committed in more than one country, or committed in one country but have links to one or more countries in terms of crime management, the operational scope of the organized criminal group, and its effects.⁴²

➤ **Piracy at sea and armed robbery against ships as "Hostage-taking"**

When piracy at sea and armed robbery against ships involve kidnapping for ransom, this can be considered as hostage-taking and interpreted under the HC. The Convention defines hostage-taking as direct participation or involvement in the capture or detention, and intimidation to kill, injure, or continue holding the hostage, either actually or attempted, to compel a State, an

³¹ Lihat Konvensi SUA, Pasal 3 ayat 1(a), 1(b), 1(c), 1(g)

³² Lihat Konvensi SUA, Pasal 3 ayat 2

³³ P.K, Mukherjee & M. Meija Jr., *The SUA Convention 2005: a critical evaluation of its effectiveness in suppressing maritime criminal acts*, 2006, 12 JIML, halaman 173.

³⁴ Lihat Konvensi SUA, Pasal 2 Ayat 1

³⁵ Menurut OCC, "Grup Terstruktur" berarti grup yang tidak dibentuk secara acak untuk melakukan pelanggaran segera dan yang tidak perlu memiliki peran yang ditetapkan secara formal untuk para anggotanya, kelanjutan keanggotaannya atau struktur yang dikembangkan. Lihat OCC, Pasal 2, (c)

³⁶ Menurut OCC, "kejahatan serius" berarti tindakan yang merupakan pelanggaran yang dapat dihukum dengan perampasan kebebasan maksimum setidaknya empat tahun atau hukuman yang lebih serius. Lihat OCC, Pasal 2, paragraf (b)

³⁷ Lihat OCC, Pasal 2, Paragraf (a)

³⁸ Lihat OCC, Pasal 5

³⁹ Lihat OCC, Pasal 6, menurut OCC, 'hasil kejahatan' berarti setiap properti yang berasal dari atau diperoleh, secara langsung secara tidak langsung, melalui tindakan pelanggaran.

⁴⁰ Lihat OCC, Pasal 8

⁴¹ Lihat OCC, Pasal 23

⁴² Lihat OCC, Pasal 3 ayat 2

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

intergovernmental international organization, an individual, or a group of people to do or refrain from doing any act as an explicit or implicit condition for the release of the hostage.⁴³ However, the HC does not apply in hostage-taking situations that occur within the territory of a State where both the victim and the perpetrator are nationals of that State, and the suspect is found within that State.⁴⁴ Yes, the crime of "hostage-taking" must involve multiple countries for the provisions of the Hostage Convention (HC) to apply.

Criminalization

UNCLOS does not contain explicit provisions criminalizing piracy at sea. However, by interpreting Article 105, which states that any State may arrest those involved in piracy and decide on the sanctions to be applied, it can be concluded that for this to happen, piracy as defined in Article 101 must be criminalized under national law. However, the SUA Convention, OCC, and HC require participating States to criminalize the offenses considered by each of these conventions, with penalties appropriate to the urgency of the offense.⁴⁵ Therefore, actions such as attempting, committing, supporting, or facilitating piracy at sea and armed robbery against ships, which are considered unlawful acts against maritime safety, organized crime, or hostage-taking, will be criminalized under each country's national law. Thus, it is necessary to criminalize piracy at sea and armed robbery against ships under national law following international law to combat these crimes. In this regard, the UN Security Council calls on all States to criminalize these crimes under their national laws.⁴⁶

Jurisdiction

➤ Universal Jurisdiction over Piracy at Sea

All countries can claim jurisdiction over piracy at sea according to UNCLOS, as Article 105 of the Convention provides the possibility for any country to seize pirate ships or aircraft on the high seas, in the Exclusive Economic Zone (EEZ), or elsewhere outside the jurisdiction of any country, or ships or aircraft taken and controlled by pirates, to arrest individuals and seize property on board. Additionally, the country that arrests and seizes may prosecute the perpetrators, impose sanctions through its national courts, and also decide on actions to be taken regarding the pirate ship or aircraft and property, subject to the rights of third parties acting in good faith. Therefore, Article 105 provides countries with the opportunity to apply universal jurisdiction over acts of piracy on the high seas, in the EEZ, or elsewhere outside the jurisdiction of any country, regardless of the nationality of the ship or aircraft and the pirates, as well as the origin of the victim. On one hand, this results from considering pirates as enemies of all mankind or *hostis humani generis*, in the sense that piracy disrupts global maritime and shipping activities. On the other hand, the establishment of universal jurisdiction over the crime of piracy can be analyzed in the context that, since no country has exclusive jurisdiction over the high seas or elsewhere outside the jurisdiction of any country, to combat this crime, it is necessary to allocate universal jurisdiction over specific crimes when committed in certain areas. This can also be understood as a means to avoid reluctance by flag states to punish their nationals or their inability to intervene at the moment when the act of piracy is carried out.

➤ Jurisdiction of Coastal States over Armed Robbery Against Ships

UNCLOS does not provide specific clarification regarding cases of armed robbery against ships that resemble piracy but occur in internal waters, territorial seas, and archipelagic waters. However, it recognizes the extension of a coastal state's sovereignty beyond its land territory to these maritime zones.⁴⁷ The only exception is the case of innocent passage, which is still subject to the fulfillment of certain conditions, such as not disturbing the peace, order, or security of the coastal state.⁴⁸ When commenting on the provisions regarding the definition of piracy, the ILC opined that when a piracy-type attack occurs within the territory of a state, including its territorial waters, the general rules should apply, as it is the responsibility of the state to take the necessary actions for repression of acts committed within its territory. Thus, it can be concluded that armed robbery against ships is a matter of the jurisdiction of the coastal state.

➤ Semi-universal Jurisdiction over Piracy at Sea and Armed Robbery Against Ships as "Acts Against the Safety of Maritime Navigation," "Organized Crime," or "Hostage-Taking"

As mentioned earlier, piracy at sea and armed robbery against ships can be addressed under the SUA Convention, OCC, and HC. In terms of jurisdiction, these three conventions require State Parties to assert jurisdiction over offenses committed as long as the offenses are committed against or on board ships flying the flag of the State Party at the time the offense was committed, or are committed within its territory, including its territorial sea, or by its nationals, or by persons who are stateless but residing in that State, or when its nationals become victims of the offense.⁴⁹ In other words, a connection to the location or affiliation with the State

⁴³ Lihat HC, Pasal 1

⁴⁴ Lihat HC, Pasal 13

⁴⁵ Lihat Konvensi SUA, Pasal 5, OCC, Pasal 5, 6, 8 & 23, HC, Pasal 2

⁴⁶ Lihat UNSCR 1950 (2010), paragraf 13

⁴⁷ Lihat UNCLOS, Pasal 2

⁴⁸ Lihat UNCLOS, Pasal 19, paragraf. 1 & 2 (l), Pasal 21(a)

⁴⁹ Lihat Konvensi SUA, Pasal 6(1) & (2), OCC, Pasal 15 (1) & (2), HC, Pasal 5 (1)

Enforcement of Sovereignty and Legal Measures Against Acts of Piracy at Sea Considered as a Form of Maritime Terrorism in Indonesian Waters

Party is required to establish jurisdiction over the offense. Additionally, in the case where the suspect is present in the territory of the State Party, the State is required to assert jurisdiction over the case, or if not, to extradite the individual to the competent State Party.⁵⁰ The principle of 'prosecute or extradite' is a means to ensure that any alleged offender is prosecuted as long as they are within the territory of a State Party. To date, the SUA, OCC, and HC Conventions have 160, 171, and 166 State Parties, respectively, representing an average of 84.18% of the world's countries. Based on these statistics, by requiring a link to a State Party to establish jurisdiction and applying the 'prosecute or extradite' principle, there is quasi-universal jurisdiction over maritime piracy and armed robbery at sea as acts against the safety of maritime navigation, as organized crimes, or as hostage-taking. However, for operational mechanisms related to jurisdiction to function, national implementation of these Conventions is crucial. Indonesia is a State Party to the OCC and HC Conventions, but Indonesia is not a State Party to the SUA Convention.

2. Enforcement Actions

In addition to conveying the essence of the principle of universal jurisdiction over piracy, Article 105 of UNCLOS provides enforcement actions that can be carried out by any State, including (1) seizing the pirate ship or aircraft, (2) arresting the suspected perpetrators, (3) seizing property on board the ship, and (4) bringing the case to national courts. These actions can be carried out regardless of the alleged perpetrator's nationality, the nationality of the victim, or the pirate ship/aircraft involved.⁵¹ To carry out enforcement actions, authority and power are granted to warships, military aircraft, or other ships or aircraft clearly marked and identifiable as government-owned and authorized for such purposes.⁵² They are granted the "right of visit," which includes boarding and inspecting suspected ships. It should be noted that the *right of visit*, as well as any seizure, must be based on reasonable grounds and considerations. Additionally, the "right of hot pursuit" can also be exercised.

In relation to armed robbery against ships, since this is a matter of the jurisdiction of the coastal state, enforcement actions must be determined by national law. However, it may be considered that enforcement measures for maritime piracy could also be adopted by coastal states for armed robbery against ships.

Under the SUA, OCC, and HC Conventions, enforcement measures regarding maritime piracy and armed robbery against ships are considered with the "prosecute or extradite" principle as discussed above. Any suspected offender located within the territory of a State Party must be detained in accordance with its national law, and criminal proceedings must either be initiated or extradition must be carried out.⁵³ The SUA Convention provides the possibility for the master of a ship from a State Party ("Flag State") to deliver a suspected offender to the authorities of another State Party ("Receiving State").⁵⁴ This can be seen as the basis for the transfer mechanism of pirates and armed robbers at sea.⁵⁵ In the same way, the receiving state is required to apply the principle of "prosecute or extradite." The three Conventions require state parties to make crimes extraditable and provide mechanisms for extradition.⁵⁶ The OCC also requires state parties to adopt regulations and measures to allow for the seizure and confiscation of proceeds of crime, property, equipment, or other means used in the commission of offenses, and to enable the tracing and seizure of such assets in good faith by third parties.⁵⁷ The division of proceeds from crime or confiscated property must also comply with administrative procedures.⁵⁸

International law provides a comprehensive legal framework to address piracy at sea and armed robbery against ships. The primary source of international law on this issue is UNCLOS, as it contains specific provisions on piracy at sea and can be used alongside IMO resolutions that define armed robbery against ships. However, other agreements such as the SUA, OCC, and HC conventions can be adapted to review acts of piracy at sea and armed robbery against ships based on those provisions. International law allows for the definition of offenses, their criminalization, and the assertion of jurisdiction. Furthermore, international law also provides guidelines on enforcement and preventive measures. Two approaches can be taken to define piracy at sea and armed robbery, namely the zonal approach and the general approach. However, this heavily relies on national legislation to be effective.

⁵⁰ Lihat Konvensi SUA, Pasal 6(3), OCC, Pasal 15 (3) & (4), HC, Pasal 5(2)

⁵¹ IMO, LEG 98/8/3, *Piracy: elements of national legislation pursuant to the United Nations Conventions on the Law of the Sea*, 1982, 18 February 2011, paragraph 5.

⁵² Lihat UNCLOS, Pasal 107

⁵³ Lihat Konvensi SUA, Pasal 7

⁵⁴ Lihat Konvensi SUA, Pasal 8

⁵⁵ Van Ginkel, B. & Van der Putten, F.P, *The International Response to Somali Piracy: Challenges and opportunities*, (The Netherlands: Martinus Nijhoff Publishers, 2010), halaman 132.

⁵⁶ Lihat Konvensi SUA, Pasal 11, OCC, Pasal 16, HC, Pasal 9 & 10

⁵⁷ Lihat OCC, Pasal 12

⁵⁸ OCC Pasal 14.

C. CONCLUSSION

Based on the discussion conducted by the author regarding the issues raised in this study, the following conclusions can be drawn:

It is important to consider international law in the process of developing or improving national legislation related to maritime piracy and armed robbery against ships. In international law, piracy and armed robbery at sea have been regulated through international treaties and recommendations. The definition adopted in national legislation almost word-for-word mirrors the definition of piracy found in UNCLOS, and considers piracy to occur anywhere in the maritime zones under the jurisdiction of a state and its surroundings. Piracy at sea occurs in international waters or outside the jurisdiction of any country, while armed robbery against ships occurs in a state's internal waters or territorial sea.

Although piracy and maritime terrorism share many similarities and overlap, not all piracy constitutes maritime terrorism. An act of piracy can be classified as maritime terrorism if it meets the elements of a terrorism offense, as defined in Article 1 of Law No. 5 of 2018, which states that terrorism involves violence or the threat of violence that creates terror or widespread fear, causing mass casualties or damage to vital objects, the environment, public facilities, or international facilities, with ideological, political, or security disturbance motives. Therefore, an act of piracy can be considered maritime terrorism if it is driven by ideological or political motives. However, if the piracy, such as cargo theft or kidnapping for ransom, is carried out for reasons other than ideology or politics, it is simply treated as a piracy offense under the Penal Code (KUHP). When piracy is motivated by ideological or political goals against a state, it can be classified as maritime terrorism.

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