

ENFORCEMENT OF INTERNATIONAL AND ASEAN REGIONAL LAWS IN THE PROTECTION OF VICTIM OF PIRACY

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ABSTRACT

Maritime security is an important aspect in maintaining the economic, political, and social stability of a country, especially those with extensive sea areas. The threat of maritime crime, such as ship hijacking, can disrupt international trade activities, damage relations between countries, and endanger the safety of shipping. Therefore, collective efforts between countries are needed to eradicate ship hijacking crimes. In recent decades, ship hijacking crimes have increased in certain waters, both on the high seas (piracy) and in territorial waters (armed robbery against ships). This article discusses law enforcement in order to maintain maritime security at the international and ASEAN regional levels as protection for victims of piracy. This article evaluates how Indonesia, as a country that ratified UNCLOS 1982, faces the challenge of protecting its citizens from ship hijacking crimes. From various cases of ship hijacking that have occurred and involving Indonesian citizens, it shows the lack of effective control by the Indonesian government. Therefore, the Indonesian government is expected to be more proactive in preventing acts of piracy and armed robbery against ships in the future.

Keywords: *Armed Robbery Against Ship; Law Enforcement; Legal Protection; Maritime Security, and Piracy*

INTRODUCTION

Piracy is an activity involving attacks, robbery, or even detention of ships and crews on the high seas, often accompanied by threats and violence.¹ High seas piracy has a global scope that involves acts of violence on the high seas. High seas piracy is categorized as a “delict jure gentium,” or a crime that is contrary to global law.² Whereas, according to the *United Nations Convention on the Law of the Sea (UNCLOS)* 1982 defines the definition of piracy in Article 101, says that:

“Piracy consists of any 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 the passengers of a private ship or a private aircraft, and directed:*
 - 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 State;*
- b) *any act of voluntary participation in the operation of a ship or of an aircraft with*

¹Juan Matheus, “Ratifikasi Konvensi SUA 1988: Optimalisasi Regulasi Hukum Dalam Pemberantasan Perampokan Bersenjata Di Perairan Indonesia,” *Jurnal RechtsVinding* 12, no. 3 (2023): 529.

²Cheivin E. Kuada, “Upaya-Upaya Mengenai Permasalahan Pembajakan Di Laut,” *Lex Et Societatis* 7, no. 6 (2019): 6.

knowledge of facts making it a pirate ship or aircraft;

c) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b). ”

The broader definition of piracy in UNCLOS 1982, allowing for all acts of violence or illegal detention, or any act of destruction to be qualified as an act of piracy, provided that the act is carried out for private purposes and occurs on the high seas, or in a place outside the jurisdiction of any state. Based on Article 101 UNCLOS 1982, the first element is any act of violence or illegal detention, or any act of destruction, this allows acts such as detention, robbery, plunder, hijacking, seizing, or attacking ships with violence to qualify as an act of piracy. However, it must be underlined that the key word in this case is the act of “illegal”, thus it opens up the possibility that legitimate acts of detention or violence, such as to exercise the right of self-defense or for other reasons justified by law, are not included in acts of piracy.

The concept of piracy itself is an hijacking activity at sea including violence against the crew with the aim of taking advantage of other ships illegally and this occurs on the high seas. Meanwhile, armed robbery against ships occurs in the jurisdictional seas of a country.³ In understanding the difference between piracy and armed robbery which is based on the locus delicti or location which distinguishes the two hijacking activities. It is necessary to understand the nature of the high seas as a part of the sea that is not included in the territorial sea or territorial waters of a country, therefore no country may claim sovereignty or take actions that reflect sovereignty on the high seas.⁴

Armed robbery against ships according *The International Maritime Organization* (IMO) is defined under the Resolution of A.1025 “*Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships*”. This Code defines the elements of *Robbery against ships*:⁵

1. *Any illegal act of violence or detention or any act of depredation, or threat thereof, other than an act of piracy, committed for private ends and directed against a ship or against persons or property on board such a ship, within a State’s internal waters, archipelagic waters and territorial sea;*

2. *Any act of inciting or of intentionally facilitating an act described above.*

The aforementioned definition delineates piracy and armed robbery as maritime crimes that jeopardize crew safety and the security of commercial shipping routes; nevertheless, piracy transpires on the high seas, while armed robbery happens inside a nation’s territorial waters. Consequently, maritime security plays a crucial role in attempts to thwart acts of piracy at sea.

Prior to the composition of this article, several publications addressing similar subjects, namely maritime security, existed; yet, this essay exhibits distinct variances in its content. Numerous further articles examine terrorism within the framework of maritime security, the function of the ASEAN regional organization concerning maritime security, and related topics. The article by Galang Fadillah Rahmawan, titled ‘Judge’s Considerations in Imposing a Verdict Against Perpetrators of the Crime of Piracy on the Coast’ published in *Journal Res Justitia*, examines the accountability of coastal piracy offenders and the rationale behind judicial verdicts imposed on them.

The second reference is an article authored by Kiki Hadi Wirantno, Dwi Budiarti, and Wiwin Ariesta, titled ‘Legal Protection of Ship Crews Against Commercial Ship Hijacking in

³Achmad Reza Putra, “Partisipasi Indonesia Dalam Diplomasi Pertahanan Untuk Keamanan Maritim Di Asia Tenggara (Studi Tentang Regional Cooperation Agreement on Combating Piracy And Armed Robbery Againsts Ships in ASIA),” *Jurnal Prodi Diplomasi Pertahanan* 3, no. 2 (2017): 5.

⁴I Wayan Parthiana, *Hukum Laut Internasional Dan Hukum Laut Indonesia* (Bandung: Yrama Widya, 2014).

⁵Resolution of A.1025 (26) “Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships” Adpted on 2nd of December 2009

Indonesian Waters' published in Journal Yuriyaya, which specifically addresses the protection of merchant ship crews in Indonesian waters.

The third reference is an article by Nicholas Halomoan Hutauruk and Teuku Syahrul Ansari titled "Legal Settlement of Sea Piracy Against the International Criminal Court", published in the Wahana Pendidikan Scientific Journal, which examines the mechanisms for adjudicating piracy cases through the International Criminal Courts. This article examines the disparity in the context of its research objectives, specifically aimed at understanding the efficacy of a comprehensive legal framework in enhancing maritime security. Additionally, it addresses the measures that the state can implement to deter piracy and armed robbery. This article further delineates many situations exemplifying the measures used by the state to enforce maritime security. This study aims to contribute to the development of International Law on maritime security.

Finally, this study will focus on two primary issue identifications, the first being the legal framework governing the prevention of piracy and armed robbery within the context of international law and ASEAN. The second aspect is to the state's efforts in safeguarding victims of piracy and armed robbery within the framework of maritime security. This study will concentrate on addressing these two primary issues to ensure the conversation is more targeted to the identified concerns.

METHOD

This study employs normative legal research as its methodological approach. Normative legal research is an investigation aimed at uncovering the veracity of legal norms.⁶ This research use literature reviews to acquire primary and secondary legal resources. Primary legal resources are derived from statutes, regulations, and international legal instruments. Secondary legal resources are sourced from books and journal articles pertinent to this subject, acquired from reputable sources such as Hein Online or official papers released by national or international organizations. This study employs two approaches under the normative legal research: the statutory approach and the case law approach.

ANALYSIS AND DISCUSSION

1. International Legal Instruments in Combating Piracy

Piracy, as an international crime, is a breach of the interests of the global community, necessitating intervention by an international authority. Consequently, every nation has the power to prosecute those responsible for such international offenses.⁷ Consequently, it is essential to examine the international legal mechanisms available to address the crimes of piracy and armed robbery.

a. United Nations Convention on the Law of the Sea (UNCLOS) 1982

Within the framework of customary international law, this act of piracy is deemed a criminal offense subject to universal jurisdiction, hence permitting any government with authority to

⁶Peter Mahmud Marzuki, *Penelitian Hukum* (Jakarta: Kencana Prenada Media Group, 2023).

⁷Dan Imelda Tangkere Stivannia Juliana Umboh, Fernando J.M.M. Karisoh, "Kewajiban Negara Terhadap Pembajakan Kapal Ditinjau Dari Konvensi Hukum Laut Internasional 1982," *Jurnal Fakultas Hukum UNSRAT Lex Administratum* 12, no. 3 (2024): 7.

prosecute acts of piracy irrespective of their location.⁸ This means that all countries have the right to enforce their jurisdiction over acts of piracy, including on the high seas. This aligns with Article 100 of UNCLOS 1982, which states: “all States shall cooperate to the fullest possible extent in the repression of piracy on the high seas or in any other place outside the jurisdiction of any State”. UNCLOS 1982 provides jurisdictional authority and obligation to each country to cooperate in eradicating the crime of piracy.

Universal jurisdiction serves as a basis in customary international law and represents the power conferred by UNCLOS 1982. All governments possess the right to prosecute piracy; nonetheless, this concept fundamentally empowers a nation to establish legislation that serves as the foundation for exercising criminal jurisdiction over acts of piracy.⁹ The principle of universal jurisdiction originates from the notion that an individual who has perpetrated an act of piracy has engaged in a crime against all of mankind and is subject to prosecution universally. Article 100 of UNCLOS 1982 grants legitimacy to all nations to use their legal authority in prosecuting acts of piracy. In UNCLOS 1982, jurisdiction has been given to every country to try the crime of piracy, Article 105 reads:

“On the high seas, or in any other place outside the jurisdiction of any State, every State may seize a pirate ship or aircraft, or a ship or aircraft taken by piracy and under the control of pirates, and arrest the persons and seize the property on board. The courts of the State which carried out the seizure may decide upon the penalties to be imposed, and may also determine the action to be taken with regard to the ships, aircraft or property, subject to the rights of third parties acting in good faith.”

Article 105 explicitly allows a state to confiscate a pirate vessel, apprehend the offenders, and punish them for the crime of piracy in line with relevant domestic legislation. The crime of piracy is linear, as previously elucidated, and falls within universal jurisdiction, so permitting any nation to prosecute the perpetrators of piracy. The significance of its relevance to a nation renders that nation accountable for fulfilling the obligations outlined in Article 100 of UNCLOS 1982 to eliminate all acts of piracy. This is a duty for all nations, particularly for those who are signatories to UNCLOS 1982. Indonesia ratified UNCLOS 1982 with Law Number 17 of 1985 on the Ratification of the United Nations Convention on the Law of the Sea. This indicates that Indonesia is a member state and is bound by the terms of UNCLOS 1982, so incurring full duties to safeguard against and be responsible for the crimes of piracy.

b. Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia (ReCAAP)

ReCAAP is an agreement in the regional context of the Asian Region, countries in the region work together to overcome the crimes of piracy and armed robbery.¹⁰ The primary objective of this agreement is to serve as a cooperative mechanism for member nations to facilitate collaboration, including the sharing of information and materials pertinent to piracy and armed robbery.¹¹ Article 7 of this agreement is designed to oversee and ensure the seamless transmission of information pertaining to piracy, armed robbery against ships, and related issues. ReCAAP serves as a hub for information exchange and capacity enhancement for member nations in the prevention of piracy and armed robbery.

⁸Dan Milena Sterio Michael P. Scharf, Michael A. Newton, *Prosecuting Maritime Piracy, Domestic Solutions to International Crimes* (New York: Cambridge University Press, 2015).

⁹Ibid.

¹⁰ Robert Beckman, “Piracy and Armed Robbery against Ships in the Southeast Asia: A Critical Evaluation with a Focus on the Singapore Strait,” *Asia-Pacific Journal of Ocean Law and Policy* 8 (2023): 201–20, <https://doi.org/10.1163/24519391-08020002>. the number of incidents of piracy and armed robbery against ships (aras

¹¹Surendra Kumar Karwasara, “A Policy Impact Evaluation of the Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia,” *World Maritime University* (2022).

ReCAAP provides several authorities that can be carried out by member countries in enforcing the law against crimes of piracy and armed robbery. Article 3 states:

1. Each Contracting Party shall, in accordance with its national laws and regulations and applicable rules of international law, make every effort to take effective measures in respect of the following:

(a) to prevent and suppress piracy and armed robbery against ships;

(b) to arrest pirates or persons who have committed armed robbery against ships;

(c) to seize ships or aircraft used for committing piracy or armed robbery against ships, to seize ships taken by and under the control of pirates or persons who have committed armed robbery against ships, and to seize the property on board such ships; and

(d) to rescue victim ships and victims of piracy or armed robbery against ships.

2. Nothing in this Article shall prevent each Contracting Party from taking additional measures in respect of subparagraphs (a) to (d) above in its land territory.

Article 3 of ReCAAP authorizes member states to arrest pirates, seize pirate vessels, and seize property on board such vessels as long as it is in the context of law enforcement to prevent and eradicate piracy and armed robbery, and to rescue victims and vessels affected by piracy or armed robbery. Article 2 provides broader authority for member states to implement any action apart from the actions mentioned as long as it is in the context of eradicating the crimes of piracy and armed robbery.

However, due to several factors, Indonesia opted not to join ReCAAP. Firstly, systematic sources pertained to Indonesia's international context. Secondly, societal sources involved domestic criticisms and suggestions. Thirdly, governmental sources related to the political landscape in Indonesia, particularly the ratification processes of international agreements, including input from the DPR. Lastly, idiosyncratic sources concerned the personal attributes of the policymakers, specifically the President at that time.¹²

c. ASEAN Declaration on Transnational Crime 1997 Dan ASEAN Regional Forum (ARF) Statement on Cooperation Against Piracy And Other Threats To Security 2003

Piracy has also become a concern for ASEAN, where piracy is prone to occur in the Malacca Strait trade route so that piracy crimes must be addressed comprehensively in order to create maritime security in ASEAN. In the context of the ASEAN region, efforts to prevent piracy have been adopted by ASEAN in the ASEAN Declaration on Transnational Crime 1997. In this Declaration, the parties agree to fight all forms of transnational crime, one of which is piracy.

The ASEAN Declaration on Transnational Crime 1997 does not explicitly provide a mechanism for action that can be taken to eradicate piracy, but this declaration emphasizes the commitment of member countries to work together in strengthening cooperation at the regional level in combating piracy. This declaration can be a reference for the commitment of ASEAN regional countries in building bilateral and multilateral cooperation in eradicating piracy.

Furthermore, the ASEAN Regional Forum (ARF) Statement on Cooperation Against Piracy and Other Threats to Security 2003 contains legal instruments in ASEAN for the purpose of law enforcement against piracy. In an effort to establish regional maritime security and stability within ASEAN, the ARF is a regional dialogue forum that is convened at the ASEAN level to address the issue of piracy and armed hijacking, particularly in the waters of Southeast

¹²Achmad Ismail, "Alasan Indonesia Tidak Meratifikasi The Regional Cooperation Agreement on Combating Piracy and Armed Robbery Against Ships in Asia (ReCAAP)," *Jurnal Alternatif* 1, no. 1 (2022): 87.

Asia. ARF is a pioneer in the institutionalization of maritime security cooperation in Southeast Asia.¹³

In ARF, the parties agreed to cooperate in order to prevent acts of piracy in the region. In addition, the ASEAN regional countries reached an agreement to collaborate in order to safeguard ships that conduct international shipping.¹⁴ This demonstrates the parties' dedication to enhancing maritime security, as the potential consequences of maritime security concerns on regional stability, international commerce, and the protection of mariners and coastal communities are substantial.

The existence of international legal instruments and legal instruments in the ASEAN region regarding preventive efforts against piracy and armed robbery demonstrates the high level of attention that all member countries of UNCLOS 1982, including ASEAN regional countries, pay to piracy. This severity is indicative of the widespread recognition that maritime security is a critical component of the preservation of international peace and stability. Consequently, it is crucial for nations to maintain their efforts to fortify regional and international collaboration, revise regulations, and implement more effective preventive measures in order to establish a secure, stable water region that promotes sustainable economic growth.

2. State Efforts to Prevent and Protect the Victims of Piracy

It is the responsibility of every country, particularly one that is a member state of an international legal instrument that addresses piracy and armed robbery, to adhere to all of its provisions, which include the prevention of piracy offenses, the protection of its citizens, and law enforcement efforts. Indonesia, for instance, is a state that ratify the UNCLOS and one of the ASEAN member countries. In essence, Indonesia has an obligation to protect its citizens in any circumstances based on UNCLOS 1982 and Indonesian national legal instruments, both at home and abroad, this is in accordance with the Principle of Maximum Protection, which is one of the principles that is the basis for the preparation of Law Number 12 of 2006 concerning Citizenship of the Republic of Indonesia.

In essence, this principle of maximal protection is a principle that mandates the Indonesian government to ensure the protection of all citizens in all circumstances, whether at home or abroad.¹⁵ In this instance, the state is under a significant obligation to safeguard its citizens who are victims of piracy. The state bears an important role and responsibility in protecting its citizens, the state cannot ignore the protection of citizens who are victims of piracy. The role and capabilities of the state are greatly needed in this case. Efforts that can be made by a country are through diplomacy or military operations.

a. Naham 3 Case

Diplomacy is one method of safeguarding captives from piracy crimes, as evidenced by the Naham 3 ship, which was held hostage by Somali pirates while traversing Somali waters, 115 nautical miles east of the city of Hobyo, Somalia.¹⁶ This case is a piracy case that concerns Indonesian citizens as victims. It demonstrates the state's efforts to safeguard captives who are being held hostage by Somali pirates. The duration of this case was approximately five years, spanning from 2012 to 2016.¹⁷

¹³I Gusti Bagus Dharma Agastia, "Maritime Security Cooperation Within The ASEAN Institutional Framework: A Gradual Shift Towards Practical Cooperation," *Journal of ASEAN Studies* 9, no. 1 (2021): 28.

¹⁴Kovtun and Vartovnyk, "ASEAN Regional Forum as a Cooperative Security," *Actual Problems of International Relations* 1, no. 159 (2024): 46–53.

¹⁵Stivannia Juliana Umboh, Fernando J.M.M. Karisoh, "Kewajiban Negara Terhadap Pembajakan Kapal Ditinjau Dari Konvensi Hukum Laut Internasional 1982."

¹⁶ICC International Maritime Bureau, "Piracy and Armed Robbery Against Ships" (Cinnabar Wharf, 2017).

¹⁷Asep Setiawan dan Endang Sulastri, *Politik Indonesia Berbasis Kerakyatan* (Jakarta: UMJ Press, 2017).

The Naham ship is not under Indonesian flag and is owned by a company based in Oman. During the hostage crisis, one of the five Indonesian crew members aboard the Naham ship succumbed to a malaria attack.¹⁸ The President of Indonesia, the Indonesian Minister of Foreign Affairs, the State Intelligence Agency, and several other countries, including the Philippines and China, which had citizens affected by this incident, then implemented diplomatic initiatives. In 2015, this collaboration was successful in releasing four Indonesian citizens who were the victims of piracy and held as hostages.¹⁹ This demonstrates that the government can protect victims of piracy by engaging in diplomacy and collaborating with external parties to share intelligence information.

The state has guaranteed protection for its citizens who are abroad in article 21 of Law Number 37 of 1999 concerning Foreign Relations, which states: “*In the event that Indonesian citizens are at risk of real danger, the Representative of the Republic of Indonesia is obliged to provide protection, help, and establish them in a safe area, as well as attempt to repatriate them to Indonesia at the cost of the state*”. Thus, its relevance to victims who are prisoners in this piracy case will also receive protection from Indonesia and is guaranteed by law.

Conversely, the Naham 3 case is regarded as a triumph in the operation conducted by the Indonesian government in partnership with external parties, such as other countries that share the same interest in releasing the personnel from their country. These endeavours were effective in liberating Indonesian citizens who were being held captive by Somali pirates and in completing the process of repatriating the victims. This demonstrates the efficacy of diplomatic initiatives in ensuring that victims of piracy offenses receive legal protection.

Nevertheless, the Indonesian government’s failure to promptly address the Naham 3 case of piracy crimes is a significant issue. This case has been dragging on for an extended period, with Indonesian citizens experiencing approximately four to five years of hostage-taking as a consequence of the hijacking. Tragically, one of the five hostages passed away during the hostage standoff. This is a critical juncture in the future of efforts to safeguard Indonesian citizens who are the victims of comparable incidents.

b. MT Orkim Harmony Case

Kasus pembajakan Kapal MT Orkim Harmony adalah kasus *armed robbery* kapal tanker berbendera Malaysia diserang oleh kelompok bersenjata di selat Malaysia pada 12 Juni 2015. Kapal diambil alih dan rute pelayaran diubah menuju Vietnam serta dengan kru kapal yang disandera. Dan pada akhirnya pemerintah Malaysia, Indonesia, Singapura, Dan Thailand berkoordinasi untuk melacak Kapal tersebut. Kapal akhirnya ditemukan dan para pembajak melarikan diri, akan tetapi tertangkap oleh otoritas Vietnam. Para pembajak meninggalkan kapal dengan kondisi kru kapal dengan kondisi relatif aman²⁰.

Kasus ini menunjukkan betapa pentingnya upaya suatu negara untuk mencegah terjadinya kasus *armed robbery* tersebut. Kasus tersebut memiliki relevansinya dengan konsep keamanan maritim, yang dimana tantangan dalam keamanan maritim ini sangat beragam diantaranya perdagangan narkoba, perdagangan senjata, perdagangan manusia, pembajakan kapal atau *armed robbery*, dan lain-lain. Akan tetapi yang menjadi fokus dalam hal ini adalah mengenai tantangan keamanan maritim dalam upaya mitigasi tindak kejahatan *armed robbery*. Mitigasi terhadap tindak kejahatan *armed robbery* tidak hanya bergantung pada tindakan represif,

¹⁸Syaiful Ahmadi, “Strategi Pencegahan Piracy Attack Saat Melintasi High Risk Sea (HRA) Di MV Pan Energen” (Sekolah Tinggi Ilmu Pelayaran (STIP) Jakarta, 2024).

¹⁹Utari Angdriani, “Upaya Pemerintah Indonesia Dalam Melindungi Warga Negara Indonesia Di Luar Negeri (Studi Kasus Perompakan Kapal FV Naham 3),” *JOM FISIP* 8, no. 1 (2021): 3.

²⁰Mangisi Simanjuntak Handy Kurniawan, Agung Pramono, “Implementation of Mutual Legal Assistance in Law Enforcement of the Crime of Piracy by the Indonesian Navy (Study. MT. Orkim Harmony),” *Scientific Journal of Management* 10, no. 10 (2021): 270.

tetapi juga pada pendekatan preventif, seperti peningkatan pengawasan di wilayah rawan, penggunaan teknologi pemantauan maritim, serta kerja sama regional dalam hal pertukaran informasi intelijen dan pelaksanaan patroli bersama.

Keamanan maritim menjadi tanggung jawab dan tugas besar oleh seluruh negara, terutama negara-negara yang memiliki wilayah laut strategis. Hal ini mencakup kewajiban untuk menjaga jalur pelayaran internasional dari ancaman kejahatan seperti pembajakan atau *armed robbery*, penyelundupan, dan kegiatan ilegal lainnya yang dapat mengganggu stabilitas kawasan. Adapun elemen-elemen yang merupakan bagian dari keamanan maritim adalah seperti adanya perdamaian dan keamanan Internasional dan Nasional; adanya kedaulatan, integritas teritorial, dan kemerdekaan politik; adanya keamanan jalur komunikasi laut; adanya perlindungan keamanan dari kejahatan laut; adanya keamanan sumber daya, akses ke sumber daya dan ke dasar laut; adanya perlindungan lingkungan; serta adanya keamanan bagi semua pelaut dan nelayan ²¹.

c. Kasus MV Sinar Kudus

Pada 16 Maret 2011 Kapal berbendera Indonesia, Sinar Kudus MV, yang sedang dalam perjalanan melewati kawasan perairan Somalia, diserang oleh pembajak asal Somalia ²². Kapal dengan awak kapal berjumlah 20 orang disandera oleh pembajak Somalia selama 1 Minggu. Dua hari setelah *armed robbery* ini, Indonesia langsung merespon dengan berkomitmen untuk membebaskan para sandera ²³. Kemudian Pemerintah mengambil Langkah dibawah kendali Presiden Susilo Bambang Yudhoyono mengadakan operasi militer tertutup untuk misi pembebasan sandera awak kapal MV Sinar Kudus di Somalia. Alhasil para sandera berhasil dibebaskan dengan selamat dan dengan kesepakatan pembayaran uang sebesar US\$ 4,5 Juta terhadap kelompok perompak Somalia ²⁴.

Operasi pembebasan sandera di Somalia ini memang terbilang berhasil dalam misi penyelamatannya, dengan taktik operasi militer tertutup sehingga menjaga keamanan strategi negara dalam misi ini, dan juga menjaga informasi ini agar tidak bocor sehingga para tawanan aka naman. Operasi militer yang dilakukan Indonesia ini menunjukkan bahwa dalam memberikan perlindungan terhadap korban tindak kejahatan pembajakan ataupun *armed robbery* dapat dilakukan dengan operasi militer yang dilakukan oleh suatu negara.

d. Mekanisme Penegakan Hukum Kejahatan Pembajakan

Terlepas dari keberhasilan pemerintah dalam melakukan beberapa operasi militer dan melalui uang tebusan atas korban pembajakan atau *armed robbery*, seharusnya Indonesia juga bisa menggunakan yurisdiksi pengadilannya dalam mengadili pembajak asal Somalia tersebut. Jika dianalisis lebih lanjut, seperti pada contoh kasus kapal MV Sinar Kudus yang berbendera Indonesia, penegakan Hukum nasional dapat diterapkan dalam kasus pembajakan tersebut, sesuai Pasal 438, 439, 440, dan 441 Kitab Undang-Undang Hukum Pidana (KUHP) mengenai perbuatan pembajakan. Penerapan yurisdiksi dari negara bendera kapal merupakan hal yang umum dilakukan di ranah Internasional, yurisdiksi negara bendera sudah menjadi bagian lama yang melekat dalam *Customary International Law*.

²¹Dohar Sianturi Ichsanul Mutaqin Ali, Lukman Yudho, "Strategi Pertahanan Laut Dalam Menghadapi Ancaman Keamanan Maritim Di Wilayah Laut Indonesia," *Jurnal Education and Development* 10, no. 1 (2022): 375.

²²Kurniasanti & Joko Setiyono, "Penanggulangan Kejahatan Perompakan Di Laut Indonesia Berdasarkan Perspektif Hukum Pidana Internasional," *JCH (Jurnal Cendekia Hukum)* 6, no. 1 (2020): 29–47, <https://doi.org/10.5040/9781350013421.ch-006>.

²³Yugo Diandhika, "Idiosinkretik Susilo Bambang Yudhoyono Terhadap Kebijakan Penanganan MV Sinar Kudus," *Jurnal Analisis Hubungan Internasional* 2, no. 1 (2013): 346.

²⁴Asri Dwi Utami, "Analisis Yurisdiksi Perompakan Kapal Laut Di Laut Lepas Menurut Hukum Internasional (Studi Kasus Perompakan Kapal Sinar Kudus Mv)" (Universitas Sebelas Maret Surakarta, 2012).

Contoh penerapan yurisdiksi negara Bendera adalah pada kasus Lotus. Kasus bermula dari kapal berbendera Turki yang ditabrak oleh kapal yang berbendera Prancis di laut lepas, dan menimbulkan korban dari pihak kapal Turki. Turki menerapkan yurisdiksinya untuk menghukum warga negara Prancis tersebut karena perbuatannya yang menyebabkan jatuhnya korban jiwa bagi kapal berbendera Turki. Prancis kemudian tidak terima jika warga negaranya dijatuhi hukuman oleh otoritas Turki, sehingga kasus ini dibawa ke *Permanent Court of International Justice* (PCIJ). Alhasil PCIJ dalam putusannya menyatakan bahwa Tindakan penahanan yang dilakukan otoritas Turki tidak bertentangan dengan Hukum Internasional, artinya tindakan penerapan yurisdiksi negara bendera kapal adalah sah ²⁵.

Maka dari itu, relevansinya terhadap kasus pembajakan, seharusnya Indonesia bisa menerapkan yurisdiksi hukumnya dalam mengadili para pelaku tindak kejahatan pembajakan atau *armed robbery*. Melalui Hukum Nasional Indonesia, pengadilan domestik dapat mengadili para pelaku. Selain yurisdiksi Indonesia dapat diterapkan terhadap pelaku kejahatan pembajakan atau *armed robbery*, yurisdiksi Indonesia juga melekat pada para korban tawanan di Somalia yang merupakan WNI, ini berkaitan dengan relevansinya terhadap asas nasionalitas pasif yang dimana tindak pidana di luar yurisdiksi Indonesia yang merugikan terhadap kepentingan Negara Indonesia dapat dikenakan sesuai dengan hukum yang berlaku di Indonesia. Dasar pembenaran dari asas nasionalitas pasif ini adalah bahwa negara berhak melindungi warga negaranya yang berada di luar teritori negaranya, maka dari itu negara asal korban berwenang untuk mengadili tindak pidana tersebut berdasarkan hukum asal negara korban.

Selain dari asas nasionalitas pasif yang dapat diberlakukan Indonesia dalam melindungi korban sandera oleh pembajak Somalia, pemerintah juga bisa menggunakan penerapan asas yurisdiksi universal (*universal jurisdiction*). Konsep universal berarti setiap negara berhak menerapkan yurisdiksinya untuk menuntut para pelanggar hukum asing yang merugikan kepentingan negaranya, terlepas dari kebangsaan atau asal negara para pelaku tersebut ²⁶. Ini berarti berlaku untuk menuntut kejahatan yang diakui merupakan kejahatan universal, dalam hal ini adalah tindak kejahatan pembajakan. Dalam kasus *armed robbery* yang terjadi di perairan teritorial suatu negara, maka negara pantai lebih cenderung dapat menerapkan yurisdiksinya dalam mengadili pelaku di dalam batas wilayahnya. Hal ini ditunjukkan pada kasus MT Orkim Harmony, yang dimana pengadilan nasional Malaysia memberlakukan yurisdiksinya atas kasus tersebut. ²⁷

Kasus-kasus mengenai tindak kejahatan pembajakan dan *armed robbery* di atas menunjukkan beberapa cara yang dilakukan oleh berbagai negara dalam menangani dan melindungi korban dari tindak kejahatan pembajakan dan *armed robbery*. Salah satunya adalah Indonesia, seperti dalam kasus para pekerja yang berada di kapal Naham 3 yang merupakan warga negara Indonesia, dan kasus MV Sinar Kudus yang berbendera Indonesia disandera oleh perompak Somalia.

Dalam pemaparan kasus di atas memang Indonesia berhasil dalam menangani kasus tersebut dengan hasil para sandera dapat terselamatkan, kecuali dalam kasus Naham 3 yang dimana 1 awak kapal yang berasal dari Indonesia meninggal selama disandera. Yang menjadi kekurangan dalam penegakan hukum terhadap pelaku pembajakan adalah tidak adanya upaya Indonesia untuk mengadili para pelaku tersebut, padahal dengan jelas bahwa UNCLOS 1982 memberi yurisdiksi bagi semua negara pihak untuk menerapkan yurisdiksinya terhadap kasus

²⁵Ario Triwibowo Yudhoatmojo, "Penerapan Yurisdiksi Universal Untuk Menanggulangi Dan Mengadili Pembajakan Di Laut Berdasarkan Resolusi Dewan Keamanan Perserikatan Bangsa-Bangsa Dalam Kasus Pembajakan Di Teluk Aden" (Universitas Indonesia, 2010).

²⁶Dan Joko Setiyono Duwi Aryadi, Jhuanda Fratama Kharismunandar, "Implementasi Penerapan Yurisdiksi Negara Dalam Pembajakan Kapal Di Perairan Laut Indonesia (Sea Piracy)," *Halu Oleo Law Review* 4, no. 2 (2020): 193.

²⁷Muhammad Hameedullah Md Asri dan Md Khalil Ruslan, "Prosecuting Piracy at the High Seas: The Experience of Malaysia," *IJUM Law Journal* 26, no. 2 (2018): 311.

kejahatan pembajakan. Seharusnya Indonesia mengadili para pelaku tersebut, berdasarkan asas yurisdiksi universal. Indonesia juga berkewajiban menjalankan apa yang diamanatkan dalam UNCLOS 1982 mengingat Indonesia merupakan bagian dari negara peratifikasi UNCLOS 1982.

Dengan diratifikasinya UNCLOS 1982 oleh Indonesia, ini membuat Indonesia memiliki kewajiban secara hukum untuk tunduk terhadap segala ketentuan dalam UNCLOS 1982. Sehingga relevansinya adalah dengan tidak dilakukannya upaya penegakan hukum dalam mengadili para pelaku tindak kejahatan pembajakan berdasarkan asas yurisdiksi universal, ini menunjukkan bahwa Indonesia tidak menjalankan apa yang menjadi amanat dalam UNCLOS 1982. Padahal pada hakikatnya negara yang telah meratifikasi suatu perjanjian Internasional ini menunjukkan bahwa negara tersebut tunduk pada ketentuan dalam perjanjian tersebut. Hal ini linear dengan Vienna Convention on the Law of Treaties (1969) khususnya dalam pasal 14 ayat 1 yang berbunyi: “*The consent of a State to be bound by a treaty is expressed by ratification...*” Ini berarti jelas bahwa suatu ratifikasi oleh negara maka akan menunjukkan negara tersebut tunduk pada segala aturan dan amanat dalam perjanjian tersebut, termasuk dalam hal ini Indonesia terhadap ketentuan dalam UNCLOS.

Hal ini tentu menjadi poin yang harus diperhatikan oleh Indonesia mengingat kasus pembajakan dan *armed robbery* yang terjadi terhadap korbannya yaitu warga negara Indonesia cukup banyak terjadi, sehingga dengan itu Indonesia harus lebih sadar akan pentingnya perlindungan hukum dari tindak kejahatan ini. Negara adalah aktor yang memainkan peran penting dalam hal upaya preventif tindak kejahatan pembajakan dan *armed robbery*.

CONCLUSION

Law enforcement of piracy crimes in the context of international law has received attention from many countries. The existence of UNCLOS 1982, ReCAAP, and the ASEAN Declaration on Transnational Crime 1997 have become international legal instruments in order to combat the crimes of piracy and armed robbery. Indonesia is not a member country in ReCAAP, but Indonesia is part of a member country in UNCLOS and the ASEAN Declaration, so that the existence of this international instrument can strengthen Indonesia's legitimacy in the global scope in eradicating the crimes of piracy and armed robbery.

The management of armed robbery cases, as demonstrated in the aforementioned cases, is evidence that the state can implement diplomatic or military operations to safeguard victims. The Government's numerous initiatives to safeguard victims are commendable. Nevertheless, the government continues to be inadequately equipped to enforce the law against those who engage in armed burglary and piracy. Essentially, Indonesia has the authority to exercise jurisdiction over this matter under the principle of universal jurisdiction, which was established by UNCLOS 1982. The state has the authority to exercise its legal dominion over the perpetrators of piracy offenses in accordance with article 105 of UNCLOS 1982. As the actor responsible for safeguarding maritime security from armed assault and piracy, the Indonesian state is obligated to protect its citizens.

Suggestions for the future management of cases in order to enhance Indonesia's assertiveness and proactiveness in the pursuit of justice for victims of piracy crimes, given that Indonesia has yet to enforce its legal jurisdiction to prosecute the perpetrators in the aforementioned case. If Indonesia is able to take more real action to bring the perpetrators of the piracy crime to justice, it will indirectly demonstrate its capability and strength in the global arena in eradicating similar crimes. This will also serve as a reminder that Indonesia is unafraid to confront those who

commit piracy offenses. Consequently, those who wish to engage in piracy against Indonesian citizens will be hesitant to do so due to the legal strength of the country and the government's commitment to maritime security.

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