

## CHAPTER I

### INTRODUCTION

#### A. Background

Marine Territory is a component of the region that has a vital role where the sea waters have an ecosystem, and the resources contained are very much and very valuable so that a crucial to supporting continuity in life on earth and becomes an area to support the continuity. This is being one of places to explore the resources contained life on earth, according to legal definition, the sea is all seawater freely connected throughout the earth's surface.<sup>1</sup> Marine waters are also an important or very strategic area for a country in terms of economic trade, social, environmental, and defense play a crucial role in geopolitics that occurs in the world today.

Marine waters for a country, especially archipelagic, are one of the most essential and crucial areas for the country's survival. The waters of the sea area are not only a place to process the available natural resources but become a bustling and precious trade route area. One of the uses of sea waters is to become an international ship trade route.<sup>2</sup> Sea waters in the trade route connect one land with another, connecting the land between islands in the country and the land of a country with other countries. The challenges in conducting trade by using sea waters certainly have a very extreme and crucial due to the route.

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<sup>1</sup> Prof. Dr. Mauna Boer, *Hukum Internasional : Pengertian Peranan Dan Fungsi Dalam Era Dinamika Global*, Ii, Vol. 6 (Bandung: Alumni, 2013).

<sup>2</sup> M. Syamsul Rizal, Alma Wiranta Endro Tri Susdarwono, "Geografi Maritim Terkait Perairan Darat, Perairan Kepulauan, Dan Laut Wilayah Indonesia Dalam Perspektif Hukum Administrasi," *Studia Legalia* 5 (May 2024): 4–5, <https://doi.org/10.61084/Jsl.V5i01.86>.

The rapid and unpredictable changes in climate and weather in the sea area and the environmental impacts resulting from trade shipping activities are a challenge in traveling by sea. In addition to these two things, there is a big challenge that always awaits a voyage in the form of a very gripping and immensely worrying crime that become focus of attention of countries, namely crime of ship piracy or ship hijacking that often occurs in several sea waters in this world.

Piracy or ship hijacking is a maritime crime in waters, particularly straits, high seas, and oceans. The crime of ship hijacking is often referred to by many people and emphasized as the act of “Pirates” because when there is an incident of ship hijacking in sea waters, all criminal activities are carried out on high seas and territorial sea.

Maritime Piracy that involves the sea as a tool, channel, and natural resource in carrying out crimes of piracy and ship hijacking. Terrorist crimes, including piracy, are transnational crimes. Transnational crime is a social phenomenon that involves several factors, such as people, places, and groups, which are influenced by social, cultural, and economic factors.<sup>3</sup> Therefore, piracy and ship hijacking crimes are usually caused by economic factors and poverty.

Piracy is one of the crimes that has become active again and become an international threat since cold war. These crimes are highly unacceptable and contrary to the global community's interests. Therefore, these crimes are considered *jure gentium* offenses, meaning all states have the right to arrest and punish the

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<sup>3</sup> Kharismunandar Fratama jhuanda, Setiyono joko aryadi duwi, “Implementation of State Jurisdiction in Sea Piracy in Indonesian Marine,” *HaluOleoLaw* 4, no. 2 (September 2, 2020): 4, <https://doi.org/http://dx.doi.org/10.33561/holrev.v4i2.11768>.

perpetrators. Thus, piracy are crimes of universal territory international law.<sup>4</sup> A universal sovereignty are criminal act that falls under the jurisdiction of all states wherever it is committed. Therefore, every state has the right to arrest the perpetrators of piracy and ship hijacking in high seas and punish them regardless of their nationality and place where crime of piracy and ship hijacking was committed.

In international law, piracy or ship hijacking is one of the crimes that has become the centre of attention in international law. This crime not only threatens the safety of shipping but also affects a country's economic and political security. Therefore, the issue of ship hijacking has become a complex problem in international law because it involves juridical aspects, maritime security, and cooperation between states. In addressing this issue, several countries have agreed to various treaties and conventions, which will be explained later. Some of these conventions are organized UNCLOS 1982, SUA 1988 and International Maritime Organization (IMO).<sup>5</sup>

Based on article 101, The essence of piracy or sea-armed robbery in international law is the crime is committed only for a personal purpose. In other words, the crime of hijacking a ship for any reason other than a personal purpose is not included in definition of crime piracy. Therefore, the crime not included any act

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<sup>4</sup> Q.C Starke J.G., Introduction To International Law, Ed. Djajaatmadja Iriana Bambang, 10th Ed. (Jakarta Timur: Sinar Grafika, 2010).

<sup>5</sup> Aula Qurrotu Aini Eunike Angelita, "Penerapan Yurisdiksi Dalam Pembajakan Kapal Kota Budi Singapura Di Perairan Nigeria 2020," Justice Pro 5, No. 1 (June 2021): 4, <https://doi.org/10.53027/Jp.V5i1.254>.

committed by the ship's crew on board the ship and direct ship itself the goods or person in board ship.<sup>6</sup>

So based on above categorized piracy when it meets following requirements:

1. Illegal Act: There must be an act of violence, detention, or depredation committed for private purposes crew or passengers in private vessel or aircraft.
2. Location in high seas, outside jurisdiction any state.
3. Any place outside jurisdiction state.
4. Voluntary participation Engaging operating vessel known as a pirate vessel or aircraft.
5. Incitement and Facilitation: Committing acts that encourage or facilitate acts of piracy.

Based on the explanation above, the essence piracy in international law is that the crime is committed purely for personal purposes. In addition to definition piracy according to UNCLOS 1988, The Definition of piracy according to SUA 1988.<sup>7</sup> Stipulated in Article of SUA 1988 number 3 states that a person can be considered to have committed a crime as follows:

1. Taking control vessel threat and force
2. Committing violence against person on board ship when doing so may jeopardize navigation.

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<sup>6</sup> Shaw N. Malcolm, *Hukum Internasional*, ed. Zakkie M. Irfan, trans. Baehaqi Imam, Khozim M. Widowatie Sri Derta, 6th ed. (Bandung: Nusa Media, 2013).

<sup>7</sup> Natashya, Ariawan Gunadi, Steven Nigel Bunalven Juan Matheus, "Ratification Of The SUA 1988 Convention: Optimization Of Legal Regulations In Erating Armed Robbery In Indonesian Waters," *Rechtsvinding* 12 (December 2023): 5–6.

3. They damage or destroy ships, which may endanger navigation.
4. Placing a device or the like that may cause damage to the vessel
5. Destroying ship facilities and infrastructure that endanger shipping navigation
6. Conveying misleading information that may endanger navigation.
7. Killing or injuring person on board ship

Based explanation above, according to SUA 1988, a person can be said to have committed a crime when they do something that threatens the security of a voyage. This convention is based on the urgent needs of the international community because of the many acts of piracy and ship hijacking that disrupt the stability of shipping and disturb the peace of every country.

The ship and the crime of ship piracy is a severe issue for all countries regulated in international law through UNCLOS 1982 in article number 100, “*...All States shall cooperate to the fullest possible extent in the repression of piracy on high seas or any other place outside jurisdiction of any State...*”. So that other countries can communicate with each other to fight piracy and protect shipping security. Therefore, ship hijacking is a maritime crime categorized as a transboundary crime.

Therefore, every state must protect ships on high seas that use flag of origin as well as possible, as stipulated in UNCLOS 1982 in article number 92, “*...Ships shall sail under flag one state only and, except in exceptional cases expressly provided in international agreements or this Convention, shall be subject to exclusive jurisdiction on high seas. A ship shall not change its flag during the*

*voyage or while in port, except in cases of actual transfer of ownership or change of registration....”<sup>8</sup>*

This article also stipulated in SUA 1988 Article 6 Number (1), which reads, “....*State party shall take necessary measures establish jurisdiction over crime committed under Article 3 if crime is committed or aboard vessel flagged by that State or within its territory, including territorial sea, or is committed by one or more nationals state.*” Number (2) reads, “....*State party may exercise jurisdiction in respect of crimes committed by its nationals if such nationals threaten to kill or injure another person and the acts of such nationals are committed compel state party do or not do a particular act.*”

In modern times, pirates arm themselves with a variety of firearms and supporting equipment such as radio communications, surveillance equipment and even heavy weapons such as rocket launchers that are usually only owned by the military. Ship hijacking seriously threatens a country and a company working in the sea. Therefore, to create a safe and orderly sea area and away from the danger of pirates who use armed force, all countries are obliged to establish cooperation between countries and territories to create rules for creation security in maritime.

Almost all countries carry the challenge of eradicating piracy and ship hijacking crimes. However, many countries still have yet to agree to bilateral or multilateral agreements and international conventions that have been made and have yet to ratify them into national law, causing ambiguity and non-compliance. Ambiguity arises because some countries feel uncertain about the laws or

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<sup>8</sup> “United Nations Convention on the Law of the Sea,” n.d.

international agreements that have been made and agreed upon, so differences in the interpretation of these laws regarding piracy and sea-armed robbery crimes can lead to legal non-compliance. In addition, many countries have limited naval forces, making it difficult for them to conduct patrols and capture pirates and sea bandits, who, in modern times, have much better tools.

Pirates generally target only a few or a few types of ships they have estimated to have fantastic value. These ships are usually cargo ships and tankers, both of which are highly valuable and very important to every country. If piracy is carried out, it will make a huge profit because the ransom for the ship is very high, causing huge financial losses for the ships that are victims of piracy.

A famous ship hijacking incident was MV Maersk, Alabama, hijacking in April 8, 2009. US-flagged ship was sailing from port of Mombasa, Kenya, to the United States with a crew of 20 and carrying commercial trade supplies. On April 8, 2009, when the ship was sailing in the Somalia Sea, it was suddenly attacked by four hijackers using a small boat and armed with automatic firearms. Fully equipped, the hijackers quickly boarded the ship despite some resistance from the crew MV Maersk Alabama. Hijackers took control ship and held the captain and crew hostage, demanding a ransom of \$2 million with purpose to ship and crew.

After that learning of hijacking their ship, the american Government immediately responded by negotiating with the hijackers and simultaneously deploying their military to the location of the hijacking negotiations with the hijackers were deadlocked, and without progress, then the American Government considered taking military action. On the night of April 12, 2009, after negotiations

reached an impasse, the U.S. military and navy seal team to shot dead all pirates and rescued captain ship who was held hostage in small boat that was supposed to be carried by the pirates to the nearest coast of Somalia.<sup>9</sup>

The water area on the African continent, which is one of busiest international trade route in world, is also found in Southeast Asian region, which one of global trade waterways. Southeast Asian region is located between two continents, namely the Asian continent and the Australian continent, which is surrounded by essential waters in the form of Indian Ocean and Pacific Ocean.

Therefore, Southeast Asian region become significant sailing and transit point for international trade, making the Southeast Asian region play a vital role as a connecting route between countries and other countries, between countries and other continents. The area in Southeast Asia is the gateway to international trade ships from different continents and countries, making the area a bustling international sea traffic area every time, namely the Malacca Strait area.

The Malacca Strait in the international world trade route one of busiest and most crowded Asia-Pacific sea trade traffic routes traveled by world ships. Also with strategic geographical conditions, the Malacca Strait is a route connects indian ocean, south china sea, and also between two continent, namely the Asian and Australian continents, and connects various other significant oceans. Therefore, the

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<sup>9</sup> rizal setyo nugroho yefta christopherus asia sanjaya, "Sejarah: Kapal Maersk Alabama Dibajak Perompak Somalia," *Kompas*, August 4, 2023, <https://www.kompas.com/tren/read/2023/04/08/081500765/hari-ini-dalam-sejarah--kapal-maersk-alabama-dibajak-perompak-somalia?page=all>.



Malacca Strait has become an entry point for foreign ships to either transit or become a stopping point and destination for these trading ships.

The Malacca Strait plays a vital role in international trade with a length of around 805 KM, it make malacca strait as main route global trade, ship traveling between East Asia, Middle East, and Australian continent. Based on data collected, around 100,000 ships pass through Malacca Strait every time, so it making malacca strait most congested trade routes in world, with traffic reaching 200 boats per day.<sup>10</sup>

For countries in Association of Southeast Asian Nations (ASEAN), Malacca Strait is central place to conducting shipping activities both in trade and various activities that support shipping between these countries. In addition to being the main trade route for ASEAN countries, the Malacca Strait is a vital exploration site for several countries, with examples of Indonesia, Singapore, and Malaysia. The Malacca Strait also plays a crucial role as a trade route and a place that affects regional stability and relations between ASEAN countries.

Malacca Strait, center shipping in Southeast Asia, is certainly not immune to acts of piracy. On August 8, 2015, a Singapore-flagged tanker carrying light crude oil sailing from east of Sabah, Malaysia, to the island of Langkawi was hijacked at night. The hijackers, about 19 people, entered the ship with weapons

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<sup>10</sup> Ipdefenseforum, "Berbagai Negara Mempertimbangkan Alternatif Jalur Perdagangan Ketika Selat Malaka Hampir Mencapai Kapasitas Maksimalnya," Ipdefenseforum, December 10, 2023, <https://ipdefenseforum.com/id/2023/12/berbagai-negara-mempertimbangkan-alternatif-jalur-perdagangan-ketika-selat-malaka-hampir-mencapai-kapasitas-maksimalnya/>.

and immediately moved all the crude oil to their ship, and afterward, the hijackers damaged the ship.<sup>11</sup>

The impact of ship hijacking in the Malacca Strait has been a significant blow to all countries in the ASEAN region. Not only does it have a detrimental economic impact on the state and the victims affected by the crime, as well as a social impact on the community that makes people fearful of traveling on the route, ship hijacking crimes are very disruptive to the continuity of the state, the Malacca Strait which should be the leading shipping and trade route for the state instead creates conditions that can trigger conflicts between countries in the ASEAN region. These crimes disturb the state's security, humanity, public order, and sovereignty.

Table of ship hijacking data in Southeast Asia, especially the Malacca Strait, from January to December based on the International Maritime Bureau and International Chamber of Commerce.<sup>12</sup>

***Table 1.1 Ship Hijacking***

Total Incident	
January – December 2022	January – December 2023
38 Incidents	37 Incidents

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<sup>11</sup> Unggul Tri Ratomo Antara News, “Perompak Selat Malaka Kuras Minyak Kapal Singapura,” *ANTARANEWS*, August 10, 2015, <https://www.antaranews.com/berita/511454/perompak-selat-malaka-kuras-minyak-kapal-singapura>.

<sup>12</sup> International Maritime Bureau, “Piracy and Armed Robbery Against Ships,” *International Chamber of Commerce*, 2023, <https://www.icc-ccs.org/index.php/1342-new-imb-report-reveals-concerning-rise-in-maritime-piracy-incidents-in-2023>.

Based on above the table countries in the ASEAN region must cooperate more internationally in eradicating and combating piracy in the Malacca Strait to make shipping lanes in the Malacca Strait so that all ships can cross the route without any obstacles or conflicts. International cooperation in tackling criminal acts of ship hijacking can be done by conducting joint patrol activities carried out by each country's military. In addition to involving the military, governments can handle ship hijacking crimes between ASEAN countries by making international regulations or conventions.

The Convention was signed during twelve ASEAN summit on January 13, 2007, in Cebu, Philippines. The convention provides legal basis and framework for ASEAN countries to work together to eradicate acts of terrorism and ship hijacking in ASEAN.<sup>13</sup> The increasing incidents of ship hijacking in Southeast Asia, especially in Strait Malacca, countries in Southeast Asia immediately responded by creating and approving *ASEAN CONVENTION ON COUNTER TERRORISM 2007 (ACCT)* to eradicate crime ship hijacking in Southeast Asia.

Before *ASEAN Convention on Counter Terrorism* was established and also approved by leaders of Southeast Asia countries, various forms of multilateral cooperation of ASEAN countries to tackle crime terrorism and piracy that has often occurred in the ASEAN region, starting from ASEAN Declaration on Joint Action to Counter Terrorism, ASEAN Security Community, ASEAN Regional Forum, ASEAN Ministerial Meeting on Transnational Crime. However, the various forms

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<sup>13</sup> Siallagan Andri, "The Failure Of Asean Counter-Terrorism Cooperation In Preventing The Arrival Of Foreign Terrorist Fighters In The Marawi Conflict ," *Terrorism Studies* 5 (May 31, 2023): 4, <https://doi.org/10.7454/jts.v5i1.1057>.

of cooperation that have existed and been approved by ASEAN countries have not been able to fulfill the satisfaction and desires of ASEAN state leaders to eradicate all forms of criminal acts of terrorism, one of which is piracy and hijacking.

ASEAN Convention on Counter Terrorism 2007 is latest legal framework that produces more specific and detailed regulations. This provides strong legal basis for cooperation between countries in southeast asia so that handling terrorism and other state traffic crimes, such as Ship hijacking in the waters of the Malacca Strait, has become more coordinated. As a result, the stability of security and international shipping in the Malacca Strait region can be fully established and guaranteed by the countries in the Southeast Asian region.

Therefore, the author is interested in discussing how the arrangements in ASEAN Convention on Counter terrorism will be enforced to tackle acts of terrorism crimes in form of piracy and ship hijacking in southeast asia region, especially malacca strait, which is the entrance to the waterway from and to Southeast Asian region. So according to background description, the author intends to write a thesis titled *"Analysis The Eradication Of Ship Piracy In Malacca Strait Based On The ASEAN Convention on Counter Terrorism 2007."*

## **B. Problem Formulation**

According to background described, main problems will be formulated as follows:

1. How did ASEAN Combating ship piracy in malacca strait?
2. What are the arrangements for combating piracy in malacca strait?

### **C. Research Purpose**

According to problem formulation, objectives of this research are:

1. To find out how and what countries in the ASEAN region can do to combat and eradicate ship hijacking crimes that often occur in the Malacca Strait.
2. To provide insight into the international impact of ship hijacking crimes in the Malacca Strait.

### **D. Benefits Of Research**

This research is expected to provide benefits both theoretically and practically, as follows:

#### **1. Theoretical**

This research is expected to provide additional insight into deep issues worldwide and increase knowledge about international law studies related to global problems, especially regarding the eradication of ship piracy in the Malacca Strait based on Asean Regulation. This research is expected to provide additional insight into in-depth issues worldwide and add knowledge about international law studies related to problems worldwide, especially regarding the eradication of ship hijacking in Malacca Strait according to asean convention on counter terrorism.

#### **2. Practical**

This research is expected to provide many benefits for students, practitioners and academics of international law to know more clearly about *Analysis the Eradication of Ship Piracy in Malacca Strait based on the ASEAN Convention on Counter Terrorism 2007* in analyzing occurrence piracy cases against foreign ships

in the Malacca Strait. It can provide input to respond to this research on *the Eradication of Ship Piracy in Malacca Strait based on the ASEAN Convention on Counter Terrorism 2007*.

## **E. Conceptual Framework**

In writing this thesis, before discussing a further problem, the author will first outline a conceptual framework so that this thesis can be written systematically. The following will describe the conceptual framework used in this:

### **1. Analyze**

The term “analysis” comes from the Greek “analysis,” which means “decomposition” or “breakdown.” ‘Analysis’ is composed of two roots: “ana,” which means “again,” and “luain,” which means “to detach.” According to the Great Dictionary of the Indonesian Language, analysis is the activity of breaking down a problem related to an event in order to solve it or understand its true nature. Therefore, analysis is a process or effort to break down an object, idea, phenomenon, or problem into smaller parts in order to understand its structure, the relationships between its parts, and its overall meaning, so that it can be studied more thoroughly and a detailed conclusion can be reached by solving the problem or breaking down its components to obtain a more detailed analysis and draw a conclusion.

Analysis is very useful when it comes to taking a significant first step in conducting research or solving a problem. Therefore, analysis is a method of systematically searching for and organizing data obtained from interviews, field notes, and documentation by classifying the data into categories and selecting the

important data to be studied in order to reach conclusions about the research or problem solving that are easy to understand for both oneself and others.<sup>14</sup> Therefore, the activity of analyzing plays a very important role, as analysis forms the basis of critical thinking.

Analysis has a lot of implications for breaking down research so it's really accurate and gets the important points right based on the evidence. Analysis is also key to breaking down separate elements into parts that let you tell the difference between two aspects that are at the heart of the research problem. Analysis thus becomes an activity that allows elements to be classified and differentiated according to specific criteria, enabling the meaning they contain to be interpreted.

Therefore, analysis plays a fundamental role in exploring various aspects and meanings found in research, so that the important elements and parts of the research can be clarified in terms of their hierarchy and structure. This demonstrates that analysis will always be present in the development and processing of research, since analysis is an activity that allows new findings about the object of study to be discovered by finding innovative aspects in a given object.

## 2. ASEAN

ASEAN (Association of Southeast Asian Nations) is a regional organisation created to promote cooperation among countries in the Southeast Asian region. Founded on 8 August 1967 in Bangkok, Thailand, ASEAN initially had five members: Indonesia, Malaysia, Thailand, Singapore and the Philippines. The

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Prof. Dr. Sugiyono, *Metode Penelitian Kuantitatif, Kualitatif Dan R&D*, 19th Ed., Vol. 1 (Bandung: Alfabeta, 2013).

creation of ASEAN took place in a global and regional political context marked by Cold War tensions, conflicts between countries in the region, and the need for economic cooperation to promote development. The founders of ASEAN were aware that stability in the region could only be achieved through close collaboration, mutual respect for sovereignty, and a common desire to create lasting peace.

Association Of South East Asian Nations (ASEAN) is a regional organization located in Southeast Asia with the purpose of establishing ASEAN is to accelerate cooperation among all countries in Southeast Asia, create a safe, peaceful, and harmonious Southeast Asian region, and enhance economic growth in all Southeast Asian countries, which helps maintain political stability among Southeast Asian countries. The objectives of the ASEAN organisation are set out in the Bangkok Declaration and reinforced by the ASEAN Charter, which was adopted in 2007 and came into force in 2008.

ASEAN also promotes cooperation in the fields of education, science, technology, the environment and human rights. The fundamental principles upheld by ASEAN include state sovereignty, non-interference in internal affairs, peaceful resolution of disputes and decision-making based on consultation and consensus. However, ASEAN is not without its challenges. Differences in national interests often hinder joint decision-making, especially on sensitive issues such as the conflict in the South China Sea, the political crisis in Myanmar, or human rights violations. The principle of non-intervention, which is both a strength and a



weakness of ASEAN, sometimes leads to the organisation being seen as passive or slow to respond to internal crises in its member states.

### 3. Piracy

According to the United Nations Convention on the Law of the Sea (UNCLOS) Article 101, piracy is any illegal act of violence, detention, or depredation committed for private ends by the crew or passengers of a private ship or aircraft. Maritime piracy is one of the international crimes that has caused great concern in the maritime sector. Maritime piracy consists of acts of violence or threats of violence perpetrated by a group of people who use a ship to attack, take control of, or plunder another ship on the high seas.

Piracy is usually perpetrated by armed groups that attack merchant or passenger ships in international waters with the aim of seizing cargo, taking crew members hostage, or demanding ransom. High-risk areas such as the Gulf of Aden, the Strait of Malacca, and the Gulf of Guinea are often the main scenes of piracy due to the high volume of maritime traffic.

Piracy not only causes economic losses but also has psychological repercussions and poses a threat to the safety of crew members. Pirates not only resort to physical violence, but also use technology to track high-value ships and infiltrate their navigation systems. Therefore, a more comprehensive and sustainable approach is needed, including greater regional cooperation, economic development of coastal communities vulnerable to piracy, and the development of more modern maritime security technologies to effectively prevent and combat this crime.

This crime differs from mutiny by the crew itself, as pirates come from outside the target ship and the crime usually takes place on the high seas, an area that is outside the jurisdiction of any country. The impact of ship hijacking is very serious and alarming because it causes enormous economic losses for both companies and crew members, disrupts international shipping and trade, and threatens security and safety in the region.

#### 4. Convention

Convention is an international agreement that is binding between countries that agree to the agreement. conventions are usually carried out in that conducting multilateral international cooperation and include many other countries. conventions are generally the same as international treaties, for this reason, as article 38 of statute international court on sources of international law, International court use international conventions as a source of international law.<sup>15</sup>

A convention establishing binding international norms, standards, and obligations, or serving as guidelines in various international areas. Conventions are usually drafted through a lengthy process in international forums such as United Nations where member states negotiate and consult to reach a common consensus. Conventions play a fundamental role in creating a structured and universally accepted international legal system, as they enable coordination, law enforcement, and dispute resolution mechanisms between countries without resorting to military

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<sup>15</sup> Prof. Dr. Boer Mauna, *Hukum Internasional : Pengertian, Peranan Dan Fungsi Dalam Era Dinamika Global*, ed. denny tommy, 2nd ed., vol. 2 (bandung: PT. Alumni, 2008).

force. Although their signing and ratification are voluntary, international conventions have a significant political and legal impact, as they reflect a country's moral and diplomatic commitment to universal values.

Although conventions have legal force, their success depends largely on the political commitment and capacity of participating States to implement them. It is not uncommon for conventions to be normative in nature without robust enforcement mechanisms, so their effectiveness depends on international pressure, civil society oversight, and cooperation among States. Conventions usually nature, meaning that they formulate legal rules for countries that agree to and ratify the convention. conventions that are universal involve many countries working together to make them multilateral agreements.

## **F. Theoretical Basis**

In writing this thesis, the theoretical foundation is vital because it contains theories relevant to explaining the problem to be studied. Therefore, its preparation is crucial for writing this thesis because the theoretical basis includes the core of thought that shows the perspective from which the problem will be analyzed. In this thesis, some of the theories used include:

### **Pacta Sunt Servanda**

Pacta sunt servanda is a Latin word that means “agreements must be respected”, this is the basis and principle of cooperation. Pacta sunt servanda is an important principle in international law that serves to emphasize that parties to an agreement are bound to fulfill their obligations in good faith. This is stated in Article 26 of the 1969 Vienna Convention which reads “*Every treaty in force is binding*

*upon the parties to it and must be performed by them in good faith.*”<sup>16</sup> The article establishes that any State that signs an international treaty must comply with and apply the content of the treaty in good faith and cannot renounce it unilaterally.

The principle *Pacta Sunt Servanda* is also a fundamental pillar of international law, especially in treaties between states. The principle of *pacta sunt servanda* ensures that states that sign an international treaty are obliged to comply with its content in a responsible manner. Because of this principle *pacta sunt servanda*, there would be no legal certainty or trust in international relations.

In this international legal principle that *pacta sunt servanda*, international treaties recognised two types of obligations, namely obligations of conduct and obligations of result. In the case of obligations of conduct, the State was obliged to respect and comply with the obligations of the treaties as a law of conduct. When the State violated this obligation, it assumed responsibility for non-compliance. Therefore, obligations of conduct could be considered prohibitive norms. These obligations were rare in international treaties, with exceptions such as international criminal law.<sup>17</sup>

*Pacta Sunt Servanda* is useful in ensuring that parties bound by an international treaty respect and comply with the rights and obligations agreed upon jointly. *Pacta sunt servanda* provides legal certainty and stability in international

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<sup>16</sup> Shaw N. Malcolm, *Hukum Internasional*, ed. Essex Court Chambers and LLauterpacht Centre, 8th ed., vol. 6 (Cambridge Press, 2018), <https://doi.org/https://doi.org/10.1017/9781316979815>.

<sup>17</sup> Retno Kusniati, Prasit Aekaputra, And Nhonlaphat Pitpiboonpreeya, “Domestic Implementation Of International Law In Indonesiaand Thailand,” *Indonesian Journal Of International Law* 22, No. 1 (September 27, 2024): 174, <https://doi.org/10.17304/Ijil.Vol22.1.1895>.

relations, as States can rely on the treaties they enter into being respected. *Pacta sunt servanda* reflects the moral and legal obligation of states to comply with the content of the treaties they have signed, without breaching them or unilaterally delaying their implementation, unless there is a new agreement or a valid legal reason to make adjustments or terminate them. In this way, *pacta sunt servanda* becomes the basis for trust and stability in relations between states. However, its application must take into account the requirements for the validity of the agreement, the principle of justice, and higher legal standards. In the constantly evolving dynamics of law, *pacta sunt servanda* will remain a fundamental principle guiding the fair and comprehensive application of law in the contractual sphere.

#### **G. Research Originality**

Based on the author's search for research in this thesis scientific work, there are several previous studies that conducted research with differences and similarities in the topics studied, as follows:

1. Kerjasama Trilateral Indonesia-Malaysia-Filipina Dalam Mengurangi Kasus Perompakan Di Perairan Perbatasan Ketiga Negara.<sup>18</sup>

This research is the work of Azizah Fadyah Harahap which was submitted in 2022 at Sriwijaya University. This research discusses how Indonesia, Philippines, and Malaysia to reduce piracy cases in the waters of the three countries.

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<sup>18</sup> Harahap Fadyah Azizah, “Kerjasama Trilateral Indonesia-Malaysia-Filipina Dalam Mengurangi Kasus Perompakan Di Perairan Perbatasan Ketiga Negara ” (Universitas Sriwijaya, 2022), [https://Repository.Unsri.Ac.Id/75896/11/Rama\\_84201\\_07041381722203\\_0002037805\\_8831999920\\_01\\_Front\\_Ref.Pdf](https://Repository.Unsri.Ac.Id/75896/11/Rama_84201_07041381722203_0002037805_8831999920_01_Front_Ref.Pdf).

## 2. Efektifitas Peran Asean Convention On Counter Terrorism Dalam Menyelesaikan Isu Terorisme Di Asia Tenggara<sup>19</sup>

This research is the work of feby ridho perdana submitted on August 5, 2021 at sriwijaya university. This research discusses the problem of the effectiveness of the role of the ASEAN Convention on Counter Terrorism in solving the problem of terrorism issues in Southeast Asia.

The two types of research are different from the problems discussed in the research of this thesis scientific work, where the author focuses on what regulations govern the ASEAN region on the issue of ship hijacking terrorism and how to handle the law enforcement ASEAN Convention on counter-terrorism in combating terrorism crimes, especially ship hijacking in the malacca strait. If, in the future, the same or similar research is found, either the subject or even the Object, this research and writing can complement and support existing research.

### **H. Research Methods**

#### **1. Type of Research**

The type of research used in this research is normative juridical methods. These, namely legal research methods, focus on and examine the rules or principles that come from applicable laws, court decisions, laws and regulations, and doctrines from legal experts. This normative research focuses more on secondary written

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<sup>19</sup> Perdana Ridho Feby, "Efektifitas Peran Asean Convention On Counter Terrorism Dalam Menyelesaikan Isu Terorisme Di Asia Tenggara" (Universitas Sriwijaya, 2021), [https://Repository.Unsri.Ac.Id/60233/44/Rama\\_84201\\_07041381621106\\_0012057802\\_88319999\\_20\\_01\\_Front\\_Ref.Pdf](https://Repository.Unsri.Ac.Id/60233/44/Rama_84201_07041381621106_0012057802_88319999_20_01_Front_Ref.Pdf).

regulations or legal materials obtained from literature studies and existing documents.

## **2. Research Approach**

### **A. Statute approach**

This statute approach is carried out by examining all laws and regulations relating to the legal issues being addressed. For this reason, in this study, the author discuss the Asean Convention on Counter Terrorism.

### **B. Historical Approach**

This Historical approach examines the background of the issue, which is the frequent occurrence of ship through passing in Malacca strait and ship hijacking in Malacca strait.

### **C. Conceptual Approach**

The conceptual approach in this research will involve understanding the aspects involved in ship hijacking, such as the causes, impacts, and countermeasures applied.

## **3. Legal Material**

The research sources come from the following:

### **A. Primary legal material :**

- 1. United Nations Convention On The Law Of The Sea 1982.*
- 2. International Maritime Organization.*
- 3. Asean Convention on Counter Terrorism 2007.*
- 4. Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation 1988.*

5. *Vienna Convention on the Law of Treaties 1969.*
6. *Convention for the Suppression of Unlawful Seizure of Aircraft, signed at The Hague on 16 December 1970*
7. *Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971*
8. *Convention on the Prevention and Punishment of Crimes Against Internationally Protected Persons, Including Diplomatic Agents, adopted in New York on 14 December 1973*
9. *International Convention Against the Taking of Hostages.*

B. Secondary legal material, namely legal material explain primary legal material. The legal materials consist international law books, journals, opinions from international law experts, and other research results to support the data needs of primary raw materials.

C. Tertiary legal material, namely legal material provide clarity and support data needs primary and secondary legal material, including online newspapers, encyclopedias, websites containing law and legal dictionaries.

#### **4. Legal Material Analysis**

In writing this research, the data collected in primary and secondary data are grouped into juridical forms. As for the steps taken in analyzing legal materials, these are:

- A. Interpretation techniques applied to legal norms with systematic interpretation linked to the issues discussed.



- B. Assessing legal materials that are bound and related to the problems in the research discussed.
- C. Evaluating regulations related to the thesis.

## **I. Writing Systematics**

To obtain a clear and detailed the thesis, The writing systematics is:

### **Chapter I. Introduction**

This chapter describes the background of the problem, problem formulation, research objectives and benefits, conceptual framework, theoretical framework, research methods, and writing systematics and serves as an introductory chapter provide direction or guidelines in research and writing.

### **Chapter II. Literature Review**

This part of the chapter outlines a general overview of the conception of international cooperation, the conception of piracy crime from perspective International Law, conception of UNCLOS, and an overview of ASEAN.

### **Chapter III. Discussion**

This part of the chapter will discuss and elaborate on the law enforcement of the ASEAN Convention on counterterrorism in countering ship hijacking in the Malacca Strait and will discuss how countries in ASEAN cooperate with regional regulations in eradicating ship hijacking in Malacca Strait.

### **Chapter IV. Conclusion and Suggestion**

This chapter will contain conclusions from the discussion chapters descriptions and suggestions related to the issues raised in thesis.