

INTERNATIONAL LAW OF SEA PIRACY

Muhammet Ebuzer Ersoy
International Islamic University Malaysia
ebuzer_ersoy@hotmail.com

Abstract

Sea piracy, or piracy, is robbery conducted in sea, or sometimes in beach. It could be said that history of piracy occurs simultaneously with history of navigation. Where there are ships transporting merchandise, appears pirates are ready to have it forcibly. It has been known since the time of the occurrence of piracy Greece ancient. Included in the era Roman republic experienced piracy by the sea robbers. Since then they plow all the ships that are currently floating in the ocean near Borneo and Sumatra. However, the best in its long history written on 16th-17th century and it called as the golden age of pirates. But, the piracy not only in the past era, in the modern era as today, the piracy still exist as the criminal case in Somalia in 1990-2011, Philipine in 2016-2017, Dhobo accident in 2019 etc. The piracy is also can be called as Hostis Humani Generis it is mean the piracy is the enemy of all humans. The piracy ruled in UNCLOS articles 101-110 and in Indonesia is ruled in Criminal Law article 439-440. This article explains the international law of sea piracy, hostage release procedure and court procedure in International Criminal Court (ICC) and international punishment for pirate.

Keywords: International; Law; Sea; Piracy.

A. INTRODUCTION

Piracy is deprivation activities or the violence on the aircraft/ship/transportation of others. Piracy is generally connected with the pirating by pirates, despite frequent pirating of airplanes, buses or trains. There was also a significant copyright piracy counterfeiting, brand, and so on. International Chamber of Commerce's International Maritime Bureau recorded pirate attacks against ships in the waters of Southeast Asia increased sharply. The incidence of the most in the waters of Indonesia. "Achieving doubled per year. By 2014, six out of every 10 crimes at sea around the world occur in Southeast Asia," said Member of Commission I, Charles Honoris, in a discussion about the handling of piracy armed Paramadina University, Jakarta, Thursday (28 / 7). Based on the available data, Southeast Asia topped in cases of piracy. It is considered alarming. Therefore, Indonesia is known as a nation of sailors, it accounted for piracy figures in the world, especially in Southeast Asia. 141 cases of piracy in Southeast Asia, one hundred and piracy incident occurred in Indonesia. The same percentage also occurred in 2015 and 190 cases of piracy in the world, the majority of cases occurred in Indonesian waters. PDIP politician said, the data show Indonesia is a paradise and the target of pirates. Learning from Somalia, a decline in cases of piracy in East Africa due to the capacity and capability of law enforcement at sea is done by the state and the government increased. UNCLOS has been ratified by Indonesia. However, not

in context, since the United Nations Convention on the Law of the Sea (UNCLOS), which is set just piracy that occurs on the high seas. Indonesia has also ratified the International Convention for the Suppression of the Financing of Terrorism (SFT), 1999 through Act No. 6 of 2006. The government also needs to do another concrete step, is the initiator of effective legal framework piracy and maritime crimes against in Southeast Asia. The goal is to produce a joint commitment to prevent, deter, catch and prosecute pirates. It should also establish joint information center (intelligence sharing). Indonesia must become the motor of agreement on the establishment of an effective mechanism in ASEAN in combating piracy and crimes at sea. On the other hand, the government must also be committed to building a strong system of internal coordination among agencies and ministries, with a mission to achieve maritime security regime, as a step towards the vision of Indonesia as the world's maritime axis. Senior officials of the Foreign Ministry, AK Bebeb Djundjuran Nugraha said the completion of the piracy problem requires cooperation across countries. Sea is one of the natural resources that can be utilized by humans through the country to meet and realize the people's welfare.¹ Sea traffic needs to be regulated, so that piracy does not occur. He was advised to learn from the successful experience of securing the Malacca Strait. Sea traffic specified in the form of a corridor from the entrance to the Strait of Malacca, Andaman Sea to the sea near the border with Malaysia and Singapore. This facilitates securing such supervision. However, this requires a lengthy consultation.

The basic values of Indonesianism are clearly illustrated in the values of Pancasila which contain the values of spiritualism, collectivity, and inclusiveness.² Professor of Pelita Harapan International Politics University in Jakarta, Prof Aleksius Jemadu said Indonesia faces serious problems to secure its waters. Therefore, the ability is limited. "It's a weak government which resulted in maintaining the security of piracy," he added. In addition, the handling of piracy in Southeast Asia is still not maximized judged. Piracy Most recently in the Abu Sayyaf hostage 10 Indonesian citizens (citizen) in the Sulu Archipelago. The hostage-taking occurred for the third time in 2016. If the hostage addressed along with paying a ransom, then it motivates pirates to hold hostage the citizen. This crime will continue to be repeated, because it is considered beneficial. Indonesia can not send its military to free the hostages. No Philippine Constitution prohibits foreign military activity in the country. "This constitutional constraints seem to be utilized Abu Sayyaf to keep repeating the same crime. They believe, another military could not go to the Philippines," said Aleksius. He suggested a long-term solution. Religious figures, such as from Islamic organizations, need to preach to the southern Philippines. They can convey to the people of Sulu, Indonesian society is the family that must be appreciated, rather than being held hostage.

1 Nur Fareha, Ong Argo Victoria, Fadli Eko Apriliyanto, DISPUTE INTERNATIONAL BETWEEN INDONESIA AND MALAYSIA SEIZE ON SIPADAN AND LINGITAN ISLAND, *International Journal of Law Reconstruction*, Volume III, Issue 1, March 2019. P.1-10

2 Anis Mashdurohatun, Hayyan UI Haq, Sony Zulhuda, SOCIAL FUNCTION RECONSTRUCTION OF INTELLECTUAL PROPERTY RIGHTS (IPR) BASED ON JUSTICE VALUES, *International Journal of Law Reconstruction*, Volume I, Issue 1, September 2017, P.141-160.

B. RESEARCH METHOD

The research method is using Qualitative Research with the normative approach, that is take the sources of law such as United Nations Conference on Law of the Sea (UNCLOS) of Article 101-110 of 1982, the Law of piracy offenses other international marine vessels, International Maritime Organization and a book which is related to the text from United Nations Department of Public Information.

The data collected in this study are primary data and secondary data obtained through field studies and literature. According to data that have been obtained from the field study, the research is a socio-juridical, with the data obtained through interviews and from literature studies by reading library books, then do analysis.³

C. RESULTS AND DISCUSSION

a. Infringement piracy ship

Pirating and hostage-taking aboard Indonesia, where perpetrators of piracy and hostage taking this ship is Abu Sayyaf. Two ships and boats Tugboat Barge Brahma 12 Anand that carries 7,000 tons of coal and 10 crew members of Indonesian nationality lost contact on Monday, March 28, 2016 when it was the region of the Philippines. Two ships carrying coal Putting departed from the river, South Kalimantan on March 15, 2016. When crossing Basilan Island, where there are several small islands that are not frequently traveled by a patrol officer, the ship was chased by pirates using fast boats (speedboats), With the size of a small ship and a cargo of coal that much, the ship like this is often the target of the hijackers at the border and, in the case in the Philippines. The hijackers seized the vessel and its two crew members using firearms. They (the hijackers claiming to be from the Abu Sayyaf group) and then contact the owner of the ship for ransom of 50 million pesos (equivalent to 14.2 billion rupiah) to be met no later than March 31, 2016. Based on the last state on March 29, 2016, the ship Brahma 12 has been released and is currently in the Philippine authorities. Party chief military information service confirms to monitor the state of the waters of Indonesia, particularly the border State of Indonesia and the Philippines. Patrol uses four warships, namely KRI Surabaya, KRI Invite, KRI Ami, and KRI Saber. Foreign Ministry confirmed that there are 10 citizens who are being held hostage of the Abu Sayyaf, the Philippines. Foreign Ministry received information on Monday (03/28/2016).

Based on the initial information, the Foreign Ministry do a search and communication with the ship owner as well as the number of parties in Indonesia and the Philippines. "It is true that there has been a pirating of the tug boat and barge Brahma 12 Anand that carries 7,000 tons of coal and 10 crew of Indonesia", he said. Then, on Tuesday (03/29/2016). It is not known exactly when the ship was hijacked. The ship owners learned pirating occurred on March 26, 2016, at the time received a phone from someone claiming to be from the Abu

3 Sisca Dyah Octaviani, Andri Winjaya Laksana, IMPLEMENTATION OF LAW ENFORCEMENT AGAINST CRIME WITH SMALL MOTIVE PATTERNED RESTORATIVE JUSTICE IN POLICE SECTOR GAYAMSARI OF SEMARANG CITY, *International Journal of Law Reconstruction*, Volume III, Issue 1, March 2019, P.20-34

Sayyaf. In the communication via telephone to the company owner of the ship, the perpetrators deliver a ransom demand. Since the date of March 26, 2016, the hijackers already 2 times contacted the owner of the boat. Minister himself admitted that he continued to communicate and coordinate with related parties in Indonesia and the Philippines, including the Secretary of the Philippines. Indonesian Foreign Minister said that the current priority is the safety of 10 citizens who are being held hostage. The company so far has passed the information to the families of 10 crew members were taken hostage.

A cargo ship of South Korea (ROK) fell victim to pirates after having just departed from the port of Singapore. Piracy was to remind the world that the threat of pirates in the Malacca Strait and surrounding areas has not been lost. Yonhap news agency reported the news release of information MMAF South. Ships named CK Bluebell was attacked at 04:25 local time. When the ship had just departed from the point of transit in Singapore. "Ships (CK Bluebell) sailed with reasonable speed below 15 knots. Pirates of the speedboat chase boat speed of 20 knots and above. "As an officer of the ministry. In the boat, there are 22 crew of the ship consists of four South Koreans and 18 citizens of Indonesia. However, they carry 68 thousand tons of corn Brazil without armed personnel. Therefore, they finally gave up after trying to fight. Seven armed pirates managed to loot money of USD 13 thousand (USD 181 million) and several valuable items belonging to the crew (ABK). However, no casualties were seriously injured as a result of piracy. Only the ship's captain and navigation officer who suffered bruises because of the fight. "Those men-occupied boat for about 30 minutes," said the ministry official. Currently the cargo ship proceeded on schedule. However, they had been asked to secure the fingerprint offender by the Singapore authorities. CK Bluebell scheduled to arrive in the port of Incheon, South Korea, on 30 July. Maritime and Port Authority (MPA) of Singapore explained that the location of the ship when it was about 161 kilometers northeast waterway. "Piracy did not happen in our waters, but in the South China Sea waters near the island Anambas, "explained a spokesman for the MPA according to Channel News Asia. Southeast Asian waters, especially the Strait of Malacca, is one of the world's most important maritime territory. Just like the Strait of Hormuz, the waterway became the main line of cargo ships and tankers from the Middle East and Africa to consumers in Asia. Therefore, the vessel pirates often become easy targets of Malaysia, Indonesia, or the Philippines. In recent years, authorities from around the country tightened. However, there is still much alarmed by the situation in these waters. In early July, China also had to raise the level of alert in the waters of Southeast Asia into three. In fact, when the tanker in the Strait of Hormuz are victims of sabotage, China only raise the level of alert to two. "Explained a spokesman for the MPA according to Channel News Asia. Southeast Asian waters, especially the Strait of Malacca, is one of the world's most important maritime territory. Just like the Strait of Hormuz, the waterway became the main line of cargo ships and tankers from the Middle East and Africa to consumers in Asia. Therefore, the vessel pirates often become easy targets of Malaysia, Indonesia, or the Philippines. In recent years, authorities from around the country tightened. However, there is still much alarmed by the situation in these waters. In early July, China also

had to raise the level of alert in the waters of Southeast Asia into three. In fact, when the tanker in the Strait of Hormuz are victims of sabotage, China only raise the level of alert to two. "Explained a spokesman for the MPA according to Channel News Asia. Southeast Asian waters, especially the Strait of Malacca, is one of the world's most important maritime territory. Just like the Strait of Hormuz, the waterway became the main line of cargo ships and tankers from the Middle East and Africa to consumers in Asia. Therefore, the vessel pirates often become easy targets of Malaysia, Indonesia, or the Philippines. In recent years, authorities from around the country tightened. However, there is still much alarmed by the situation in these waters.

Countries emerging will try to control the sea to the expansion of jurisdiction to protect its interests, especially the advancement of technology is more advanced, more dense population of the world, and the increasing needs of mankind in every country to encourage their desire to take advantage of natural resources will be able to provide benefits for a country to the welfare of the nation.⁴ In early July, China also had to raise the level of alert in the waters of Southeast Asia into three. In fact, when the tanker in the Strait of Hormuz are victims of sabotage, China only raise the level of alert to two. is one of the world's most important maritime territory. Just like the Strait of Hormuz, the waterway became the main line of cargo ships and tankers from the Middle East and Africa to consumers in Asia. Therefore, the vessel pirates often become easy targets of Malaysia, Indonesia, or the Philippines. In recent years, authorities from around the country tightened. However, there is still much alarmed by the situation in these waters. In early July, China also had to raise the level of alert in the waters of Southeast Asia into three. In fact, when the tanker in the Strait of Hormuz are victims of sabotage, China only raise the level of alert to two. is one of the world's most important maritime territory. Just like the Strait of Hormuz, the waterway became the main line of cargo ships and tankers from the Middle East and Africa to consumers in Asia. Therefore, the vessel pirates often become easy targets of Malaysia, Indonesia, or the Philippines. In recent years, authorities from around the country tightened. However, there is still much alarmed by the situation in these waters. In early July, China also had to raise the level of alert in the waters of Southeast Asia into three. In fact, when the tanker in the Strait of Hormuz are victims of sabotage, China only raise the level of alert to two. The vessel pirates often become easy targets of Malaysia, Indonesia, or the Philippines. In recent years, authorities from around the country tightened. However, there is still much alarmed by the situation in these waters. In early July, China also had to raise the level of alert in the waters of Southeast Asia into three. In fact, when the tanker in the Strait of Hormuz are victims of sabotage, China only raise the level of alert to two. The vessel pirates often become easy targets of Malaysia, Indonesia, or the Philippines. In recent years, authorities from around the country tightened. However, there is still much alarmed by the situation in these waters. In early July, China also had to raise the level of alert in the waters of Southeast Asia into three. In fact, when the tanker in the Strait of Hormuz are victims of sabotage, China only raise the level of alert to two. The vessel pirates often become easy targets of Malaysia, Indonesia, or the Philippines. In recent years, authorities from around the country tightened. However, there is still much alarmed by the situation in these waters. In

4 Munsyarif, SETTING THE ANALYSIS OF NATURAL RESOURCE USE IN CONTINENTAL AREAS OF INDONESIA BY APPLICABILITY CONVENTION LAW OF PBB 1982, *International Journal of Law Reconstruction*, Volume II, Issue 2, September 2018, P.138-155

early July, China also had to raise the level of alert in the waters of Southeast Asia into three. In fact, when the tanker in the Strait of Hormuz are victims of sabotage, China only raise the level of alert to two.

Fleet One Quick Response Team (F1QR) Unit 1/Jatanrasla Lantamal IV managed to capture four (4) persons alleged perpetrators of piracy trial against MT Pioneer in the waters of Malaysia who fled to Batam, June 17, 2019. The arrest of perpetrators came from the report of APMM (Malaysian Maritime Enforcement Agency) regarding the trial of alleged perpetrators of piracy against MT. Pioneer to use two (2) pieces of wood ridden some of the pirates in the waters EOPL (East Out Port Limit) Johor East Malaysia, two people successfully secured by the APMM and 2 others escape using of, while two perpetrators fled by jumping into the sea. Based on the results of the development of two actors who were arrested by the APMM on behalf of Mohamad Aripin Bin Nurdin and Ian Shah that other actors who had fled had returned to his home address at RT 004 / RW 008 Village Tanjung Uma District of Lubuk Baja Batam picked of other. Following up on reports and information, Asintel Danlantamal IV ordered F1QR Team Unit 1 Lantamal IV carrying out investigations to Tanjung Uma Batam. And based on the photos offenders sent by the APMM, both actors on behalf of Jefri bin Ali Amin (helmsman) and Tono Bin Mulyono (ABK Of) were arrested in Agas village of Tanjung Uma District of Lubuk Baja Batam or at coordinates 01 ° 08 ' 953 "N - 103 ° 59 '994" East. Furthermore,

Piracy on the beach Somalia a threat to international ships since the start Somali Civil War early 1990s. These pirates were in territorial waters Somalia covering the area Indian Ocean off the east coast Somalia, Arabian sea and Gulf of Aden which is the world's major shipping lanes. The pirates interference will affect the world oil prices. Ships were robbed by the they vary, ranging from passenger ship to cargo ship, the pirates have been plowing tankers the dead weight above 100,000 ton,⁵ Since 2005, many international organizations, including International Maritime Organization and World Food Program, Expressed concern over the increasing acts of piracy. Piracy causes rising prices disrupt shipping and delivery of food. 90% of the reduced availability of the World Food Program arrived by sea, and the ship requires inclusion of a military

Two ships pirating case Indonesia, namely, ships and boats Tugboat Barge Brahma 12 Anand 12 that carries 7,000 tons of coal and 10 crew members of Indonesian nationality lost contact on Monday, March 28, 2016 when it was the region of the Philippines. Two Indonesian vessels were alleged to have been hijacked by a group of people who claimed the Abu Sayyaf group, they demanded a ransom of 50 million pesos (equivalent to 14.2 billion rupiah) to be met no later than March 31, 2016. Alleged to have committed a violation of the law, among others:

- 1) United Nations Conference on Law of the Sea

⁵ Khan, Sana Aftab. "Tackling Piracy in Somali Waters: Rising attacks impede the delivery of humanitarian assistance", UN Chronicle, United Nations Department of Public Information, Outreach Division,

Held in Geneva from 24 February to 27 April 1958, received either the following rules as a general statement of the basics are laid out on the international law.

a) Article 4

Each country, whether or not coastal states, have the right sail with respective flag on the high seas.

b) Article 5

(1) Each country will determine the terms of nationality that has been recognized for its ships for the purpose of registration of ships in the region, as well as wearing flag. The ships have the nationality of the country, which entitles him to fly its flag. However in order to mark the vessel nationality to be recognized by other countries, then there must be a reasonable relationship between the state Yag and ships; Specifically, the state should be firm (Effectively) organize things that have nothing to do with the rule of law and supervision over administrative matters, and social engineering of ships flying its flag.

(2) As the implementation of these things, then each country must provide evidence to the ships that have been granted the right to fly its flag.

c) Article 6

(1) Vessels must fly the flag only one country and in exceptional circumstances determined by the purpose, stated in international treaties or in these articles, shall be subject to the laws that specifically apply to the high seas. A ship can not replace the flag during transit or while in the port of transit, unless the ships actually * 2788 transferred by the owner or in the case of a change of registration.

(2) A ship that sailed to wear the flag of two or more countries, with as they pleased, no. nationality may demand something that is against a country, and ships it can be likened to a ship without nationality.

d) Article 7

The holding of the articles mentioned above disadvantage (reduce) the issue of the ships used for the purposes of official nature of the organization between the government, taking the flag of the organization.

e) Article 10

(1) Each country should conduct regulations for ships that use its flag are necessary to ensure safety at sea, among others round about:

- a. the use of the slogan, the maintenance of communications and prevention of violations;
- b. manning of ships and working conditions for the crew by taking into account the applicable international working document;
- c. construction, equipment and ships.

- (2) In the case of regulations which is each country is required to align itself with international common points that have been approved, as well as taking something necessary steps to ensure compliance with these regulations.
- f) Article 11
Will not be instructed by officials to seize or detain the ship, in addition to the official state ship itself, even though the act was committed as an act of inspection.
- g) Article 12
Each country will require the skipper of a vessel to use the state flag, as long as he can do so without actually endangering the ship, the crew or the passengers:
- (1) provide assistance to any person found at sea was in danger of sinking (lost);
 - (2) act as quickly as possible to help people who are in danger, if told that they need help, all the actions that can be expected of him properly;
 - (3) after the offense, provide aid to another ship, the crew and its passengers and, where possible, inform the other ship vessel name, the port and the port nearest registration will be visited.
- 2) Criminal Law of pirating:
- a. Book of the Criminal Justice Act Chapter XXIX on Cruise Crime
 - (1) Article 446
Whoever at the expense of their own or another person, directly or indirectly carry out leasing, loading or coverage of a ship, even though he knew that the ship will be used as defined in article 438, 38, or to do any act defined in article 439-441, punishable by a maximum imprisonment of twelve years in
 - (2) Article 447
Whoever intentionally submit an Indonesian ship at the mercy of pirates, pirate seaside, coastal plow, and plow the river, threatened:
 - (1) with a maximum imprisonment of fifteen years. if he is the ship chief;
 - (2) with a maximum imprisonment of twelve years, in other things.
 - b. According to the Criminal Law came into effect Place:
 - 1) Scope of Applicability Penal A State
Scope of application of the criminal laws of a country among others, may we meet in chapters 2, 3, 4, 5, 6, 7, 8, and 9 of the Criminal Code is not something new for the science of criminal law. In our country must pay attention to the Criminal Code that apply in other countries that may be encountered implied in the provisions as set in Article 5, paragraph 1 item 2, 6, and article 76, paragraph 2 of the Criminal Code. If the requirement as mentioned above can be considered as a deviation from the provisions as contained provisions as contained in the basic principle as mentioned above, in our country the deviation has been expanded by the necessity to also pay attention to "the exceptions are recognized in law between nations ", such as money set in Article 9 of the Criminal Code.

Article 5, paragraph 1 item 2 of the Criminal Code reads: "The provisions of the criminal under the Act Indonesia it can be applied to citizens of Indonesia, which is outside Indonesia has been guilty of committing an offense by the provisions of the criminal under the laws of the country where the offense the criminal has been done, threatened with a punishment ".

Article 6 of the Criminal Code reads: the implementation of Article 5, paragraph 1 item 2 of the Criminal Code is limited in such a way, to the death penalty can not be imposed because they deeds, the laws of the State in which the deeds that have been done, has not been threatened with death penalty".

Article 76 paragraph 2 of the Criminal Code reads: "when the verdict came from someone other judges, then against the same people do not do criminal prosecution for the same offense, namely if the decision is as follows:

- a) exemption or exemption from prosecution and
- b) a condemnation that followed by the executor of the whole sentence, remission or expiry of sentence ".

From third sound in Criminal Code, it is clear that in our country in judging some specific criminal acts, the judge must consider the Criminal Code that apply in other countries.

Article 9 of the Criminal Code reads: "the implementation of Articles 2-5, 7 and 8 of the Criminal Code is limited by the exceptions recognized in law between nations".

2) Principles of Criminal Law Enactment According Points

To solve that problem in the doctrine known some principles which are usually also referred to as "the principles of the enactment of the Criminal Code in place" or the Dutch called "de beginselen van de werking der strafwet naar de plaats". The principles are:

- a) the principle of territorial or territoaliteist-beginsel or also called lands-beginsel;
- b) the principle of nationality or nationaliteits-beginsel or also called personaliteits-beginsel or actieve persoonlijkheidsstelsel or actieve nationaliteits-beginsel or also called subject-tionsprinzip;
- c) the principle of protection or beschermings-beginsel or also called passief nationaliteits-beginsel or Realprinzip or Schutz-prinzip or by Professor SIMONS also called Prinzip derbeteiligten rechtsordnung and
- d) the principle of equality or universalsiteits-beginsel or also called wetstrafpfllege or by professor van HAMEL also called wetstrafpfllege.

According to the territorial principle, the enactment of the Criminal Code of a country solely hung on the place where the offense had been done, and where it should be located in the territory of the country concerned.

About it said Professor van Hattum, that every state is obliged to ensure security and order in the territory of their respective countries. Hence judges in every state can prosecute every people in the territory of their respective countries have committed a crime, by enacting the Criminal Code which is prevailing in the country. This means that the Criminal Code of a State would not only be enacted against the nationals of that State, but also against any foreigners in the territory of the country in the know have committed a crime.

According to Professor SIMONS, the enactment of this principle is based on the principle of sovereignty of a State, which is entire territory of that State, so that every person either permanently or temporarily located in the territory of that State shall abide by and lowered themselves on any legislation prevailing in that State. The principle of territorial is contained in the statutory provisions as set in Article 2 of the Criminal Code which reads: "The provisions of the criminal under Indonesian law it can be enacted against any person guilty of an offense in the State of Indonesia". The principle of territorial as contained in the provisions of the legislation, namely as it has been set in section 2 of the Criminal Code which says among other things that: "the provisions of the criminal under Indonesian law it can be enacted against any person outside the State of Indonesia has guilty of committing a criminal offense of (certain) on top of the shipping Indonesia. By paying attention to the various provisions of the law, Prof. Van Hattum has tried to make a formulation of a general nature about what "ship Indonesia" is as: "all the tools any shipping name and however it is used for seagoing or made for the same purpose, except:

- a) warships
- b) tools belonging cruise by sports associations recognized by the minister layer
- c) ships owned or belonging to a public institution that is used for public interest
- d) shipping tools used to catch fish on the beach
- e) boats helper
- f) ships with cargo space of less than 20 cubic meters.

The provisions under the laws in common article 3 of the Penal Code has been declared applicable to any person outside the country of Indonesia has committed on board Indonesia. Thus, then that person is punishable under the criminal laws of Indonesia, the person does not need to have a certain relationship with the ship concerned. Indonesian criminal law can also be applied for example to those who by chance came to visit Indonesia on board or the victims of accidents in law who happened to have been helped and Indonesia were loaded onto the ship.

Therefore in Article 3 of the Criminal Code that have used the words "everyone" and that meant there must be every person regardless of nationality, then there arises a question of whether people are in fact not an Indonesian citizen was able to do a crime, the according to the criminal laws of Indonesia has declared a criminal act that

can only be imposed by the citizens of Indonesia, namely as set out in Article 450 or Article 451 of the criminal Code. HAZEWINDEL-SURINGA argued that the principle of equality was not only contained in Articles 438 and 444 of the Criminal Code, and also in the articles of clauses 445 and 446 of the Penal Code which are all aimed at combating piracy at sea and other actions that have to do with not criminal.

Piracy at sea or that exist in our study are also often referred to as piracy is very rarely done people in a territory of a country, but rather on the high seas. A pirate ship is considered as a ship that has no nationality, while the pirates themselves according to the law of nations in view as "Hostis Humani Generis ", so that they can be adjudicated by any country in the world, the tools country had cacted them. If the countries in the world are trying to make himself respective authorities to act against the pirates as the intent above, then the pirate criminal act will not be breathing can be sued by any country.

c. The exceptions recognized by the relationship between the nation

If at first the discussion of "the enactment of criminal legislation in terms of place" has been in the provisions of Article 9 of the Criminal Code it is an extension deviation of that called elementary principle by MAYER, then let us see what exactly has been specified in Article 9 the Penal Code.

Article 9 of the Criminal Code reads: "the implementation of Articles 2-5, 7 and 8 were limited by exclusions recognized in law between nations".

The provision included in criminal law we do not actually need, any criminal laws of any country in the world are obliged to respect the principles of international law which has been recognized in general. However, its inclusion in the book of the law of criminal law we can understand, because at the time the book of criminal law in the form, there is an opinion of a general nature, that habit can not be applied as a law if the law itself does not specify otherwise. Yet what is called the transnational law is in fact none other than the customs in relations between nations were prevalent and continuously done person, so eventually considered as the applicable law.

According to the memory of the explanation of the formation of article 9 of the Criminal Code that, who said that "habit it can serve as a legal" and that has been showcased in Article 15 Algemene bepalingen, also apply to customs among nations as the intention on regardless of whether the habit has been so long recognized or do people in practice.

Article 15 bepalingen van Algemene wetgeving, statsblad 1847 No. 23 derived from Article 3 of the Algemene bepalingen van wetgeving prevailing in the Dutch country. Which means: "other than the exceptions with the claim applies to people of Indonesia and the people -people who in Liken with the people of Indonesia, the habit is not valid as a law, unless the law specifically say so".

As has been said above, what is called the law between nations is really a habit that by itself in article 9 of the Criminal Code that the enactment of penal provisions as formulated in

Article 2-5, 7 and 8 of the criminal Code it is limited by exclusions recognized in the law of nations, against anyone and in that case how the provisions of the criminal under Indonesian laws can not be enacted.

In accordance with the memory of an explanation, need the attention is crime, both of which have done people inside and outside the country, when in snagging people who have what is called recht van exterritorialiteit. Professor van HAMEL argue that the law of nations to note is that law applies in times of peace, and agree with the author other authors that in the law between nations as is the purpose of chapter 9 of the Criminal Code that are especially is a right that owned by the heads of state foreign, ambassadors of foreign countries and the family following their embassy officials, especially government ships warships following foreign country crew and personal armies of foreign countries who are in this country with the permission of the Indonesian republic government. In habits between nations or commonly called the law of nations that there is a recognition that the rights owned by:

- 1) a head of state with the approval of some other countries have come to visit the country in order to travel to other countries, unless the head of the country of his own volition, has waived his right example for trips or visits that are incognito. The rights is not owned by a family member or other person accompanying the head of state in a trip or visit.
- 2) an ambassador who state that one has been placed in other countries regardless of title or level, following his family members and employees of the embassy.

d. Crime of Piracy / Piracy at Sea

Piracy / pirating is any act of violence / smuggling or illegal detention, or any act of wiping out against people or goods, carried out for private purposes by the crew or the passengers of a ship / other ships. Qualification of the criminal act and the articles that have been violated:

- 1) Piracy (piracy) on the high seas in violation of Article 438 of the Criminal Code in conjunction with article 103 and article 110 and article 105 and article 107 of UNCLOS 1982.
- 2) Piracy on the beach (piracy), in violation of Article 439 KUHP.4
- 3) Piracy off the coast, in violation of Article 440 of the Criminal Code law.

e. Settlement and Acquisition Efforts Against Hostage Victims

1) Efforts Liberation Through Military Line

Indonesia pirate ship by the Abu Sayyaf in Philippine waters has twice contacted the owner of the ship to deliver the ransom since March 26, 2016, the Abu Sayyaf demanded a ransom of 50 million pesos, or about Rp. 14 billion. The ship's captain sailors from Indonesia Sangihe, Peter Tonsen Baharama could not be reached. The current release of the ship and the citizens who were taken hostage by the Abu Sayyaf is a main priority of the Foreign Ministry. Knowing that there are boats and

citizen held hostage by the Abu Sayyaf, the Navy is ready to help the government free hostages.

Chief of Navy Information Office, Edi Sucipto said that it was ready to assist the government, although there has been no instruction issued by the government to carry out the release of hostages. Edi added after Indonesia ship pirating by a group of Abu Sayyaf, guarding the Sulawesi Sea region is not tightened, routine patrol was also conducted as usual.

Foreign Affairs Ministry is collecting data and also to coordinate with the police and the military to assist in the release of hostages detained Abu Sayyaf group. Besides, the government also coordinated to the arrest of suspected Abu Sayyaf group has hijacked the citizen. President Joko Widodo has ordered the Chief of the Indonesian National Police (Police Chief) General Badrodin Haiti and the TNI chief Gatot Nurmantyo to track down the perpetrator and the 10th of the citizen. TNI also has prepared the best forces them to jump to the location each time. There are three elite troops were deployed to free the hostages. They are the best forces with members who actually have special abilities and the best of the best.

Armed Forces of the Philippines (AFP) believe the hostage release operation from Indonesia who is now imprisoned militant Abu Sayyaf, still they can handle themselves. By doing so, the Indonesian military assistance offer that has now been alerted warplanes in Tarakan and Bitung, smooth run private denied. The Philippine military has its own principles, so it is difficult to allow foreign forces involved in the hostage release. Said AFP spokesman Brigadier General Restituto said that under the constitution, our country does not allow foreign troops without a special permit.

On 10th April, 18 Philippine soldiers killed in an operation to free hostages in Jolo, Basilan. They were suddenly ambushed while on their way to the battlefield. Even so, five Abu Sayyaf militant group successfully shot dead. Army pullback hit the Philippines in hostage rescue operation beginning from the hands of the Abu Sayyaf does not weaken the morale of soldiers. The Philippine military actually held a sting operation continued for 10 hours the next day all week (10/4) morning, the same location, according to a spokesman for the Armed Forces of the Philippines (AFP). Thanks to the continued operation, it was confirmed 13 Abu Sayyaf militants were killed. Next on April 15th, 2016 18:31 pm Indonesian-flagged vessels, namely tugboat TB Henry and Barge Cristi in the waters of Malaysia-Philippines border back hijacked. The ship was on the way back from Cebu, Philippines towards Tarakan. Abducted by the group.

April 26th Abu Sayyaf militant threat they keep scatter to start executing three foreign hostages and one prisoner native Philippines. The first victim was John Ridsdel (68) from Canada. Philippine soldiers discovered the man's head in one of the empty island Jolo area. The discovery came five hours after the redemption payment date passed. This is to make the Philippine military on April 29th deployed fighter aircraft

bombarded suspected dots headquarters of the Abu Sayyaf militants in the interior of Jolo island, Sulu province. One of the hostages from Malaysia, Wong Teck Chi, contact parents via telephone connection three days earlier. He admitted that he was forced to flee to move where almost every few hours by his captors. The Philippine military began pounding the air by Jolo island since the last two weeks. Teck Chi parents who live in Sibu, Sarawak Malaysia said that they are concerned for his son told him that the attitude of the kidnapers are now increasingly the air strikes intensified. Brigadier General Alan Arrojado that during the last eight months leading the Sulu Provincial Brigade 501 was removed. He was replaced by Colonel Jose Faustino after one Canadian hostage beheaded by Abu Sayyaf militants on Jolo Island. Because Arrojado reportedly arguing against his superior, Major General Gerrardo Barrientos. They are an argument about strategy suppress militants, linked the operation to free the hostages. Brigadier General Alan Arrojado that during the last eight months leading the Sulu Provincial Brigade 501 was removed. He was replaced by Colonel Jose Faustino after one Canadian hostage beheaded by Abu Sayyaf militants on Jolo Island. Because Arrojado reportedly arguing against his superior, Major General Gerrardo Barrientos. They are an argument about strategy suppress militants, linked the operation to free the hostages. Brigadier General Alan Arrojado that during the last eight months leading the Sulu Provincial Brigade 501 was removed. He was replaced by Colonel Jose Faustino after one Canadian hostage beheaded by Abu Sayyaf militants on Jolo Island. Because Arrojado reportedly arguing against his superior, Major General Gerrardo Barrientos. They are an argument about strategy suppress militants, linked the operation to free the hostages.

According Ryamizard, under surveillance in border area, the three countries agreed to set up an unmanned aircraft (drones) to monitor from the air. To post control, will be built at strategic points that will be filled in the army of any country. Ryamizard judge has yet to deploy the KRI to strengthen border security. However, it is possible KRI will also be deployed as needed. He will focus oversee the drone. Thus, if there are foreign ships approached, immediately supervised. The move is considered as a concrete effort to anticipate the radical action that could potentially occur. Ryamizard was specifically instructed the Philippine government to be able to oversee the radical groups in the country. "The Philippines should carry a good relationship, not to place the crossfire," he said. The meeting of three countries, namely Indonesia, Malaysia, and the Philippines, was held in Manila, Philippines. The meeting was to present the Indonesian Defense Minister Ryamizard Ryacudu, Malaysian Defense Minister Dato Hishamuddin and Philippine Defense Secretary Voltaire T. Gazmin on Monday, June 20, 2016. The meeting is a follow-up to the first meeting of the three ministers on the sidelines of the ASEAN Defense Ministers Meeting, May.

2) Efforts Liberation Through Negotiation

Efforts release of 10 Indonesians who became hostages of the Abu Sayyaf militant group continues to be done, is done in various ways, including by way of Negotiation. The Indonesian government eventually sent some former terrorists as a negotiator, one of which Umar Patek. Staff BNPT, Hadi Purwanto said Umar Patek who have close relations with the Abu Sayyaf rated can help do Negotiation. Previously the government had not taken steps for the negotiation efforts to the Government of the Philippines to deploy the military denied. The Philippine government parties promised to seek all means to be able to free the 10 citizens who are captured Abu Sayyaf. The defense minister, Ryamizard Ryacudu also confirmed Umar Patek as a negotiator. As compensation Umar Patek be given remission.

Umar Patek is a convict terrorist bombing in Bali 1 2002 Umar a sentence 20 years in prison, five years since the arrest by Pakistani security forces in the city of Abbottabad, Hisham bin Ali Zein, known umar yaws has changed Patek in January 25, 2011 or months before Qaeda leader, Osama bin Laden, killed in the attack by the elite US Navy SEALs, in the same city. After the first Bali bombing, Umar went straight to the southern Philippines to join the Abu Sayyaf Group. He was in the Philippines to 2009 before returning to Indonesia in early 2010 and then caught in Pakistan a year later. Umar yaws volunteered to help the negotiation process to the government, the offer was unacceptable and could be rejected. Umar Patek also said that he did not ask for any reward in return for a reduction includes asking for time served half or 10 years. Umar Patek sure ordinary helped free 10 Indonesians without any ransom and requirements. Assistance was given unconditionally, but based on a sense of humanity and love of the homeland. Umar admitted to knowing good command of Abu Sayyaf, namely Al Habsy Misaya and Jim Dragon. Al Habsy tend to be soft and easy to communication. "I first came in, then Al Habsy" he said. Umar previous has successfully helped free the members of the International Committee of the Red Cross (ICRC), Mary Jean. The reason Islam forbids killing or hostile to women in the siege. Jane released unconditionally, no ransom. Technical about liberation, carried out in penitentiary Porong, Sidoarjo place Umar Patek in prison. He asked for the facility to use mobile phones to communicate with Al Habsy and requested telephone number. He said all of the negotiation process is done in LP Porong.

So misperception if negotiations should be conducted in one place, let alone meet with Al Habsy in the Philippines. He was some deal that will be presented so that the hostages were released. Umar would persuade Al Habsy that 10 Indonesians were released in various ways the approach pattern, such as explaining some are Muslim citizen who should be freed. While non-Muslim citizen is a friend who should be released, they have nothing to do with the battle with Philippine troops. He said all of the negotiation process is done in LP Porong. So misperception if negotiations should be conducted in one place, let alone meet with Al Habsy in the Philippines. He was

some deal that will be presented so that the hostages were released. Umar would persuade Al Habsy that 10 Indonesians were released in various ways the approach pattern, such as explaining some are Muslim citizen who should be freed. While non-Muslim citizen is a friend who should be released, they have nothing to do with the battle with Philippine troops. He said all of the negotiation process is done in LP Porong. So misperception if negotiations should be conducted in one place, let alone meet with Al Habsy in the Philippines. He was some deal that will be presented so that the hostages were released. Umar would persuade Al Habsy that 10 Indonesians were released in various ways the approach pattern, such as explaining some are Muslim citizen who should be freed. While non-Muslim citizen is a friend who should be released, they have nothing to do with the battle with Philippine troops. Umar would persuade Al Habsy that 10 Indonesians were released in various ways the approach pattern, such as explaining some are Muslim citizen who should be freed. While non-Muslim citizen is a friend who should be released, they have nothing to do with the battle with Philippine troops. Umar would persuade Al Habsy that 10 Indonesians were released in various ways the approach pattern, such as explaining some are Muslim citizen who should be freed. While non-Muslim citizen is a friend who should be released, they have nothing to do with the battle with Philippine troops.

Umar had joined the group from 2003 to 2009, the peak he was lined up as one of the Brethren Syuba Abu Sayyaf under Janjalani Kadaffy in 2005-2006. Assembly carried Syuba senior figures and influential Abu Sayyaf. Position it plays an important role in determining the policy of the group. When they joined the Abu Sayyaf, Umar said, Jim considered a senior figure which equates to himself, while Al Habsy still junior members. Al Habsy more tasked with documenting the murder of hostages, for example against the seven workers from the Philippines in 2007. Umar said that the Abu Sayyaf considers the Philippines as an enemy, Umar said Insha Allah, the success of the negotiations that up to 80 percent.

Umar warned not to underestimate the time limit given Abu Sayyaf group. Now Abu Sayyaf has given the company a second time, in 8 April to give the ransom of 50 million pesos (Rp.14 billion). "They see the seriousness of the negotiation stage within a time limit. If by the deadline the two there is no real steps to redemption, ahead of their third time limit would kill the hostages," said Umar Patek. The killing was usually will be uploaded to the internet. In the article "Radical Muslim Terrorism in the Philippines" by Rommel C Banlaoi tiles lying A Handbook of Terrorism and insurgency in Southeast Asia (2009) revealed that the efforts of hostages in the sea area to fix the plural ransom occurred after the Abu Sayyaf led by Khadaffy Janjalani since 1998. This was due to the lack of ideology and leadership abilities Khadaffy. It replaces his brother killed in military attacks and police in the Philippines, namely Abdirajak Abubakar Janjalani in December 1998. According to Umar, in the leadership of Abdurajak, Abu Sayyaf, a supply of funds from al Qaeda to the war logistics fulfillment.

However, after an absence of Abdurajak, support vanished. Piracy and hostage maintained by the Amir (leader) Abu Sayyaf later, as Albader (2006-2010) and Rudullan Sahiron (2010-present). Abu Sayyaf is composed of several Majmu'ah (group) that has its own policy. Although Radullah become leaders in general, each group has a leader, one of which Al Habsy and Jim. Hostage is purely to meet the logistics needs of each group, such as buying weapons and ammunition.

He (Umar) said that the efforts to free hostages always causes a dilemma for the families of the victims and the government. Families of the victims want the ransom given by reasons of safety, while the government would want to keep a state of national pride so preparing a military attack. Military attacks continued, it would be a boomerang. Umar revealed the Abu Sayyaf will bring together all the hostages when the guerrilla military strike. It continued, causing the hostages will be risk of becoming victims of military attacks. Omar pointed out that three members of the ICRC hostages, namely Lacaba, Andreas Notter and Eugenio Vagni, brought Albader and guerrilla group before being released after receiving ransom Abu Sayyaf on Notter and Vagni. However, if the government does not expressly negotiate, Abu Sayyaf could also kill the hostages. There must be no tears from the families of the victims, families of our soldiers, and this State. Said Umar.

3) Submission / Release of Abu Sayyaf Hostages

Ten Indonesian crew members who were held hostage by the Abu Sayyaf militant group were finally released. Deputy Chairman of the Media Group Rerie L. Moerdijat said the liberation negotiations were carried out through a dialogue between the Sukma foundation and community leaders, NGOs, the Sulu regional humanitarian organization which had direct access to the Abu Sayyaf under the direct coordination of the government of the Republic of Indonesia. The release and release of the hostages took place at around 12:15 in Pantai, Sulu, South Mindano, Philippines. The liberation effort has been carried out since April 23, 2016. The educational approach is carried out because there is already an educational collaboration between the Sukma Foundation and the South Moro autonomous Government. The hostages were handed over to the Indonesian team at Parang Beach then taken to Governor Zulu's house for one and a half hours, for the verification process. After that, it was flown from Zulu to Zambonga using two UH 1 H. Hostage helicopters arriving in Zambonga at around 16:30 local time. They again underwent verification and health checks from the Philippine team. The crew is then examined to find out what happened and experienced during the hostage period. In addition, they were asked to recognize other Abu Sayyaf groups. The Philippine government then officially handed the hostages to the Indonesian Embassy in Malaysia and representatives of the Democratic National party Victor Laiskodat. Next the hostages were flown to Indonesia and handed over to the government through the Ministry of Foreign Affairs at Halim Airport. Originally

wanted Abu Sayyaf kidnapped a businessman in the island of Tawi-tawi, southern Philippines, but failed because of the supervision and security is tighter. On the way back towards the North, the Abu Sayyaf leaders Umair Tawing passed by with less kapalBrahma 12. The hostages are deposited in a safe place belonging to the Abu Sayyaf leadership of Al Habsy. President Joko Widodo said although 10 hostages were free, the Indonesian government is still trying to free the citizens who are the other four crew members. The Government plans to hold meetings and Hilipina dangan Malaysia on May 5, 2016 to discuss security in the border area and the surrounding region.

D. CONCLUSION

Sea piracy is robbery conducted in sea, or sometimes in beach. It could be said that history piracy occurs simultaneously with history navigation. There, where there are ships transporting merchandise, appears pirates are ready to have it forcibly. International Chamber of Commerce's International Maritime Bureau recorded pirate attacks against ships in the waters of Southeast Asia increased sharply. Indonesia must become the motor of agreement on the establishment of an effective mechanism in ASEAN in combating piracy and crimes at sea. On the other hand, the government must also be committed to building a strong system of internal coordination among agencies and ministries, with a mission to achieve maritime security regime, as a step towards the vision of Indonesia as the world's maritime axis.

BIBLIOGRAPHY

- Anis Mashdurohatun, Hayyan UI Haq, Sony Zuhuda, SOCIAL FUNCTION RECONSTRUCTION OF INTELLECTUAL PROPERTY RIGHTS (IPR) BASED ON JUSTICE VALUES, *International Journal of Law Reconstruction*, Volume I, Issue 1, September 2017;
- Khan, Sana Aftab. Tackling Piracy in Somali Waters: Rising attacks impede the delivery of humanitarian assistance, *UN Chronicle*, United Nations Department of Public Information, Outreach Division;
- Munyarif, SETTING THE ANALYSIS OF NATURAL RESOURCE USE IN CONTINENTAL AREAS OF INDONESIA BY APPLICABILITY CONVENTION LAW OF PBB 1982, *International Journal of Law Reconstruction*, Volume II, Issue 2, September 2018
- Nur Fareha, Ong Argo Victoria, Fadli Eko Apriliyanto, DISPUTE INTERNATIONAL BETWEEN INDONESIA AND MALAYSIA SEIZE ON SIPADAN AND LINGITAN ISLAND, *International Journal of Law Reconstruction*, Volume III, Issue 1, March 2019;
- Sisca Dyah Octaviani, Andri Winjaya Laksana, IMPLEMENTATION OF LAW ENFORCEMENT AGAINST CRIME WITH SMALL MOTIVE PATTERNED RESTORATIVE JUSTICE IN POLICE SECTOR GAYAMSARI OF SEMARANG CITY, *International Journal of Law Reconstruction*, Volume III, Issue 1, March 2019;