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Examining the Loopholes in the Criminal Justice System of Iran and Indonesia in Relation to Piracy Crimes*

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Abstract
Due to the chaos produced by piracy in Indonesia, Southeast Asian sea areas have become hazardous for ships. On the other hand, Iran's shortage of modern maritime laws has rendered it impossible to defend Iran's rights in the region's waters. This study seeks to investigate the piracy-related gaps in the Iranian and Indonesian criminal justice systems. Using an analytical-comparative methodology, this study examined the issue theoretically. The required data and information were gathered using the library method, books, and articles. According to the results of the investigations, the most significant common flaws in the maritime law of Iran and Indonesia are the lack of specialized maritime judges and experts, the disparity in the punishment of pirates, the lack of educational facilities regarding naval law, the lack of careful and appropriate attention to the maritime conventions, and the disparity in the punishment of pirates. Based on the results of the research, it is suggested that the navies of Iran and Indonesia hold joint courses for officers, particularly young officers, to cooperate in combating maritime terrorism and piracy and exchange information in order to combat naval terrorism and piracy, as well as train and trade marine science lawyers and judges.
Keywords: Piracy; Iran; Indonesia; Existing Loopholes; Criminal Justice

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Meneliti celah-celah dalam sistem peradilan pidana Iran dan Indonesia terkait dengan kejahatan Bajak Laut

Abstrak
Akibat kekacauan akibat perompakan di Indonesia, wilayah laut Asia Tenggara menjadi berbahaya bagi kapal. Kelangkaan hukum maritim modern Iran, di sisi lain, telah membuat mustahil untuk membela hak-hak Iran di perairan kawasan itu. Studi ini berusaha menyelidiki kesenjangan terkait pembajakan dalam sistem peradilan pidana Iran dan Indonesia. Dengan menggunakan metodologi analitik-komparatif, penelitian ini mengkaji masalah tersebut pada tataran teoretis. Data dan informasi yang dibutuhkan dikumpulkan dengan menggunakan metode perpustakaan dan buku serta artikel. Menurut hasil investigasi, kelemahan umum yang paling signifikan dalam hukum laut Iran dan Indonesia adalah kurangnya hakim dan ahli khusus maritim, perbedaan hukuman bagi bajak laut, kurangnya fasilitas pendidikan tentang hukum laut, kurangnya perhatian yang cermat dan tepat terhadap konvensi maritim, dan perbedaan hukuman bagi bajak laut. Berdasarkan hasil penelitian, disarankan agar angkatan laut Iran dan Indonesia mengadakan kursus bersama bagi para perwira, khususnya perwira muda, bekerja sama dalam memerangi terorisme dan perompakan maritim, dan bertukar informasi dalam rangka memerangi terorisme dan perompakan angkatan laut, serta melatih dan memperdagangkan pengacara dan hakim ilmu kelautan.
Kata Kunci: Pembajakan; Iran; Indonesia; Celah yang Ada; Peradilan Pidana

Изучение лазеек в системе уголовного правосудия Ирана и Индонезии в отношении преступлений, связанных с пиратством

Анотація
Из-за хаоса, вызванного пиратством в Индонезии, морские районы Юго-Восточной Азии стали опасными для кораблей. С другой стороны, отсутствие в Иране современных морских законов сделало невозможным защиту прав Ирана в водах региона. Это исследование направлено на изучение связанных с пиратством пробелов в системах уголовного правосудия Ирана и Индонезии. Используя аналитико-сравнительную методологию, данное исследование рассмотрело вопрос на теоретическом уровне. Необходимые данные и информация были собраны библиотечным методом, книгами и статьями. Согласно результатам расследований, наиболее существенными общими недостатками морского права Ирана и Индонезии являются отсутствие специализированных морских судей и экспертов, неравенство в наказании пиратов, отсутствие учебных заведений по морскому праву, отсутствие тщательного и надлежащего внимания к морским конвенциям и неравенству в наказании пиратов. По результатам исследования предлагается военно-морским силам Ирана и Индонезии проводить совместные курсы для офицеров, особенно молодых офицеров, сотрудничать в борьбе с морским терроризмом и пиратством, обмениваться информацией в целях борьбы с морским терроризмом и пиратством, а также обучать и торговать юристами и судьями в области морских наук.
Ключевые слова: пиратство; Иран; Индонезия; Существующие лазейки; уголовное правосудие

A. INTRODUCTION

As a member of the international community, Iran is obliged to take practical steps in the fight against piracy within the framework of Security Council resolutions and the need for international cooperation. Because the country of Iran has more than 2700 kilometres of water border, seven large commercial ports such as Imam Khomeini Port, Bushehr, Shahid Rajaei, Chabahar, Anzali, Amirabad and Nowshahr with a nominal capacity of over 100 million tons and several other ports including Abadan, Khorramshahr, Ganaveh, Lange, Shahid Kalantari and Jask, with the necessary equipment, more than 110 wharf posts with a length of more than 17,000 meters, 350,000 square meters of transit warehouse and 28,000 square meters of docks, and more than 165 ships and 7,000 barges, provide a suitable location for transit and sea transportation. Therefore, for this reason, Iran is more involved with Somali pirates concerning piracy issues than other Persian Gulf countries due to being on the way of international waters in order to sell its oil to Mediterranean countries. On average, one Iranian ship passes through this route every day, which has caused much damage to Iranian boats in the last decade. Until now, pirates have not left Iranian ships and tankers unlucky, and Iran has incurred costs to eliminate the pirates. Due to the high activity of pirates in the Gulf of Aden, Southeast Asia is also known as one of the leading centres of piracy in the world. It is important to note that since the 1990s, only about half of all piracy has been reported. These incidents took place in and around the South China Sea.

It should be noted that developing countries (due to the need for funds and spending money) have practically ignored the issue of piracy, handling and curbing it. The Malagasy Strait is a narrow waterway that connects the Indian Sea and the South China Sea between Malaysia and Indonesia to the rest of the world. The strait is used for the movement of ships and sailing from Europe and the Middle East to East Asia, as well as the direction of smaller boats on local voyages (in the same region). Unfortunately, when we think of the Straits of Malacca, images of a waterway infested with pirates come to mind (Zara Raymond, 2009).

Piracy continues to occur in Southeast Asia. These attacks are a constant threat to maritime trade in an area that is of great importance to global transportation. Unfortunately, Indonesia does not have an antipiracy law. As a result, pirates prosecuted in Indonesian courts are punished under specific subsections of the country's criminal code (such as theft) rather than under the legal heading of "piracy". This approach of the government has led to vast

differences in the sentences given to pirates in the region. Despite the appropriate measures taken by the military units of Iran and Indonesia to ensure the safety of ships, it must be said that, unfortunately, in the criminal laws of Iran, piracy has not been criminalized as an independent crime, and its components and elements have not been specified, and it is necessary that the particular law of piracy in Domestic laws should be approved by the legislator (Shojaei & Kabir, 2018).

The point that needs to be pointed out is that in the absence of specific criminalization of piracy, there is no enforceable definition of piracy in the laws of Iran and Indonesia, and therefore piracy is one of the topics that have not been seriously addressed so far. In the following, some studies conducted in this field will be discussed. Taghizadeh (2013) in a book titled "The evolution of dealing with piracy from the perspective of law" has evaluated modern piracy and the set of strategies to deal with it from the perspective of international law. In this book, by examining the definition given in the 1982 Convention on the Law of the Sea, the concept of piracy presented in this document is criticized, and in the end, in addition to considering the issue of maritime patrol as necessary to deal with piracy in the short term, the need for cooperation between countries is discussed. Second, Fenton and Chapsos (2019) have conducted a research entitled Prosecution of Pirates: Seafaring and Indonesian Law. In this article, Indonesia's international and domestic laws regarding piracy have been considered; this has paid attention to the antipiracy provisions of Indonesia, and a new and unique insight into how the Indonesian justice system treats criminals by examining Court documents has been provided in some separate piracy cases.

The authors conclude that the sentences issued by Indonesian courts are too lenient compared to those of peer countries such as Malaysia and Singapore, and they argue that the enactment of the Piracy Act strengthens Indonesia's antipiracy legal regime. Pourbafrani et al. (2016) in an article titled Introduction equate the crime of theft with terrorism with an emphasis on piracy off the coast of Somalia and state that one of the maritime challenges of dealing with piracy is the inefficiency of the means to deal with it, which is contained in the Convention on the Law of the Sea. Therefore, to seriously fight against piracy, tools beyond this Convention are needed. One of them is equating piracy with terrorism. Using anti-terrorist conventions to deal with piracy will remove many limitations of piracy laws and deal with it more effectively. In a study, Kazemi and Heydari (2018) investigated the trial of piracy defendants in the International Criminal Court (ICC). The results showed that although the trial of those accused of piracy in the ICC can be

evaluated as a long-term solution with positive effects, this solution also has challenges in the international arena, such as not mentioning the crime of piracy in the statute of the court, lack of legal capacity, geographical connection and high financial costs. One of the suggestions to consider in the criminal fight against piracy is the establishment of particular piracy branches in the International Criminal Court (ICC). By applying a type of supplementary jurisdiction, this court can solve the current impunity problem of pirates to a large extent. This court can be formed by establishing particular branches in the regions where the frequency of piracy is high in the territory of the countries of the region and its jurisdiction is only limited to the same area consisting of several countries.

B. METHODS

This research studied the subject at theoretical levels based on the descriptive-analytical method. The necessary data and information were collected in a library using books, articles, and dissertations related to the research topic.

C. RESULTS AND DISCUSSION

1. History of Iran's maritime laws

The law of the sea of every country is derived from domestic and local laws. Still, if it is not integrated and coordinated with international laws and regulations, it will not be practical in the global law system. Of course, the drafting of Iran's maritime law approved in 1343 was not exempted from this situation, and for this reason, most of the chapters, except for the cases related to registration, citizenship, transfer, sale and mortgage of ships, which are from the national law (mainly from the trade and labor law) and the second book The French Commercial Code of 1807, and the Belgian Code of 1895 were taken, the rest being directly adapted and translated from international conventions. The use of international conventions in the formulation of Iran's maritime law was undoubtedly in order to comply with international regulations, but the interpretation of the laws of other countries was probably due to the lack of domestic laws related to this field of law, the inexperience of trained experts, and the participation of Belgian experts in this project.

2. History of Indonesian maritime laws

In Indonesia, legal action against pirate behaviour is complex and still relies on national laws. As noted, violators are subject to Prosecution and fines under applicable state law, which varies from state to state. Indonesia ratified the UNCLOS Act 1982 in No. 17 of 1985 and has since issued some rules and regulations to implement this Convention, including Law No. 6 of 1996 on Indonesian waters; Law No. 17 of 2008 related to transportation; and Law No. 31 of 2004 regarding Fisheries as amended by Law 45 of 2009, 687 before the adoption of UNCLOS 1982, Indonesia adopted Law No. 1 of 1973 on the Continental Shelf as an implementation of the 1958 Geneva Convention on the Continental Margin and Law No. 5 of 1983 with Attention to Indonesia's Economic Exclusive Zone as part of state law is long in customary international law. Indonesia has not adopted specific provisions regarding the United Nations Convention on the Law of the Sea (UNCLOS) provisions on piracy (Articles 100-110). However, before UNCLOS was ratified, Indonesia had incorporated its laws regarding maritime crimes. According to the " Shipping Crime " chapter, the Indonesian Penal Code makes anyone on board an Indonesian ship possessing an illegal vessel a criminal offence.

3. Loopholes in Iran's maritime law

In this section, the loopholes of the maritime law approved in 1343 are mentioned, which are as follows:

1- Seizure of the ship: A vital part that is not included in the maritime law of Iran is the seizure of the boat, and currently, in Iran, the seizure of the vessels is carried out based on the direction of civil procedure and commercial laws. In addition, Iran has not yet joined the "ship seizure" convention.

2- Definition of bill of lading and its types: Currently, only the general definition of a bill of lading is available.

3- Maritime transport operators: The primary and secondary operators are not foreseen in maritime law.

4- Collision at sea: our law is incomplete; our law is disconnected in this field.

5- Lack of marine insurance law

6- Article 194 is not observed.

7- Lack of judges specializing in maritime affairs and also specialized experts in the judicial system of the country

8- Lack of familiarity with the Court of Appeal and the Supreme Court with maritime issues.

9- Lack of sufficient maritime lawyers (probably does not exceed the fingers).

10- Absence of educational facilities regarding maritime law. Some units seem mandatory in the master's degree in maritime law but optional in the bachelor's degree.

11- Lack of careful and proper attention to the rules of conventions related to maritime transport when dealing with maritime claims, and as a result, general rules are put in place of specific rules. In some lawsuits filed against transport operators, it can be seen that the judges in the primary and appeal courts are still trying to define the duty of the transport operator in the framework of the commercial law as "common law" regardless of the responsibilities defined in Iran's maritime law or regulatory agreements.

12- The last part of Article 2 of Iran's maritime law rightly, correctly and logically predicts that "Iranian shipping engineers and officers and employees will be exempted from paying taxes on the salaries and benefits received when they are part of the ship's employees". In the enforcement position, the law enforcers, i.e. here the Ministry of Economic Affairs and Finance, do not allow the implementation of this legally enforceable article for the reasons that they consider to be caused by the tax laws and regulations approved after the revolution and which can also be remedied.

13- The laws themselves, even if their form and content are excellent and up-to-date, will not be valuable and practical when there are no good executives and a suitable implementation environment.

14- The scope of ownership responsibilities is not implemented.

15- The responsibilities of the commander and the crew are not defined correctly.

16- Laws and regulations related to maritime work (including working hours at sea, group medical examinations, social security, inspection, work at sea regarding favorable living conditions, and onboard work) should be amended according to the IMO convention. Since we have not yet joined these conventions, it should be amended as a domestic law.

17- Iran's maritime law does not have a law on the transfer of sunken ships from the sea and its responsibilities.

18- The most crucial problem in Iran's maritime law debate is that the field of maritime law has not found its place in Iran. Until this part of the issue is resolved, even if there is the best maritime law, there is little hope for its correct implementation and positive effects.

19- This maritime law is an unknown law among our legal authorities and courts, and some judges do not know that a maritime law was approved in 1343. Our lawyers and judges are not familiar enough with maritime law.

4. Loopholes in Indonesia's maritime law

Indonesian law has the following loopholes in dealing with pirates:

In this country, the provisions regarding the punishment of piracy are inconsistent, which is very common in some other countries and, therefore, challenging to be implemented by law enforcement agencies. Law enforcement organizations must have a clear line of command and responsibility so that law enforcement can implement it responsibly. From the legal gap regarding piracy in Indonesian law, it can be seen at what level the disregard for law enforcement is or to what authority it can be attributed. But despite these irregularities and loopholes in the Indonesian legal system, the penal system is apparently inherited from the old Dutch law. It is interesting to note; based on which a public prosecutor may be able to "temporarily detain" the case leading to corruption without a clear answer in some cases if he thinks that the continuation of the case may affect the public interest.

For this reason, maybe the prosecutor in Indonesia can enter into the issue of piracy outside the territorial waters. The country of Indonesia has implemented the direct criminalization of piracy law and adopted a suitable criminal policy, and tried to dictate the certainty and certainty of the punishment of pirates, international and regional rules have been concluded within the framework of agreements with other interested countries. States regularly with countries with shipping and maritime industries and other stakeholders interested in safe navigation through the Straits of Malacca and Singapore. By discussing issues related to safety, security, etc., they reached a strategic agreement (Zara Raymond, 2009). Finally, Indonesian law is faced with uncertainty and ignorance in the field of penal law for the crime of piracy. Therefore, as one of the maritime countries, Indonesia needs a correct maritime

strategy. Navigational strategies are essential to protect the country's sea lanes and borders and serve as part of national security policy. This topic is designed to understand why Indonesia urgently needs to redesign its maritime strategy. This research argues that a naval system is necessary for Indonesia due to changing international policies, including the emergence of non-traditional maritime security issues. These issues include illegal fishing, human trafficking, goods smuggling, piracy, and maritime terrorism. They affect international trade through the Straits of Malacca and Straits of Sanda, which border Indonesia (Suseto et al., 2018). Caroline also believes that one of the solutions to reduce piracy in Indonesia is the control of black markets in the Ike region of Indonesia and the adoption of laws related to the government's supervision of the black market.

5. Iran's problems in dealing with piracy

One of the difficulties in dealing with piracy for the country of Iran is that it is more than three thousand kilometres from Bab al-Mandab to Bandar Abbas, and it takes about 92 days for the Iranian forces to reach that point under challenging conditions that are constantly they are moving without stopping for an hour. When an attack occurs against our ships, there is an emergency room and a responsible team of 8 people who, even if it is the middle of the night and if they are at home, go to the shipping company and regularly meet with the captain and crew of the ship or with military vessels. They are in contact so that nothing happens to the attacked ship, and they take the necessary measures to save the boats in the shortest possible time. Therefore, one of the problems of dealing with the issue of piracy in Iranian law is that it is costly, which of course, has been partially covered by the interaction of the military navy, the army, the IRGC, and the police.

6. Iran's problems in dealing with piracy

One of the difficulties in dealing with piracy for Iran is that it is more than three thousand kilometers from Bab al-Mandab to Bandar Abbas. It takes about 92 days for Iranian forces to reach that point, which is a constant and continuous difficult situation. When an attack occurs against our ships, there is an emergency room and a responsible team of 8 people who, even if it is midnight and if they are at home, go to the shipping company and regularly meet with the captain and crew of the ship or with the boats. The military is in contact so that nothing happens to the attacked ship, and they take the

necessary measures to save the boats in the shortest possible time. Therefore, one of the problems of dealing with the issue of piracy in Iranian law is that it is costly, which of course, has been partially covered by the interaction of the military navy, the army, the IRGC, and the police. Hossein Khanzadeh, the commander of the Navy of the Islamic Republic of Iran, has announced that the military has entered the issue of handling and combating piracy. He stated that: "The army's navy escorted ten thousand oil tankers" and continued: "Despite the sanctions from the very beginning of the Islamic revolution, which sought to weaken the revolution, the main work of the navy's equipment began, and we were able to purchase the equipment from the west. Iranian identity was established in the seas through it. We stepped into the ocean, and with this equipment, we entered the ocean and became a manifestation of the nation's authority in the seas." Developments in seafaring and shipping, especially in the last decade, have made Iran an influential power in this field. Iran's oil tanker fleet has taken fourth place worldwide. (Mohammed Jafari, 2013)

7. Indonesia's problems in dealing with piracy

Many problems arose in dealing with maritime threats, and one of the causes of these problems was the reduction of shipping equipment and marine budgets due to international aid for the country's development. The United States announced it was paying attention to Indonesia; however, the government would not allow its fleet to interfere with its maritime sovereignty. According to some studies, Indonesia needs more than 300 ships, both small and large, to be able to defend its seas, resources, as well as its many facilities in ports, human resources and technology for these purposes. However, the country currently has only 115 ships; of these, about 25 ships operate at sea and in particular situations. Furthermore, Indonesia's current potential economic and financial crises have exacerbated the law enforcement problem at sea and maintaining order at sea. Anyway, the significant difficulties of seafaring in Indonesia can be explained as follows:

1- Preventing disputes and conflicts between states and between regions of that country as a result of the development of the judicial system and increasing the land conditions up to 12 miles and areas up to 4 miles from the coastline according to Law No. 22/1999, this is about the autonomy of regions.

2- Preventing armed robberies at sea and promoting cooperation with neighbouring countries to deal with these armed robberies and piracy.

3- Preventing illegal fishing by foreign vessels that deplete the marine resources of the Indonesian government and deprive the government of its legal income (it is estimated that about 5,000 foreign fishing vessels illegally travel in the waters of this country and in the EEZ, which causes The Indonesian government has lost about 5 billion dollars annually.)

4- Preventing and guarding the sea lanes of the Indonesian archipelago, especially after the establishment of three sea lines of the archipelago from north to south by Government Law No. 37/2002, which are very important for the world and regional navigation and military strategy; especially during global and regional crises.

5- Preventing the use of Indonesia's maritime areas to carry out illegal activities at sea, such as illicit drug trade, armed smuggling (such as helping separatist movements in the vast countries of the archipelago), smuggling of various goods (especially exploitation of forests and mines and other trades) illegal), maritime terrorism, illegal transfer of people and refugees to other countries (Djalal, 2003) so recently there has been a sharp decrease in the enforcement of laws and security at sea. This problem is acute in EEZ in Indonesia.

8. Iran's measures against piracy

The Islamic Republic of Iran and Somalia signed a memorandum of understanding on cooperation in strengthening political, economic and cultural collaboration 2018. The two countries agreed to continue joint consultations on issues of bilateral, multilateral, regional and international interest, as well as to help return peace and stability to the Horn of Africa region. Based on this memorandum of understanding, the parties pledged to use all their efforts to contribute to sustainable peace and security and fight against terrorism and the phenomenon of piracy. Furthermore, the parties emphasized their support for the actions and initiatives of the African Union to establish lasting peace and security in Somalia. This memorandum of understanding emphasizes the provision of humanitarian aid and health cooperation and exporting of medicine to Somalia. (Mehratta, 2019)

On the other hand, it should be said that the Navy of the Islamic Republic of Iran has sent several fleets to the Gulf of Aden. The third of them was sent to the region in September 2018. These fleets have repeatedly thwarted pirate attacks on Iranian and foreign commercial ships, so only since the beginning of 2013 have their conflicts with pirates reached several cases (Eslami, 2014).

9. Indonesia's measures against piracy

Indonesia has taken many measures to fight against pirates. In addition to joining international treaties, it has also concluded several agreements with other countries, including:

1- The agreement between Indonesia and Singapore in 1992 regarding cooperation for the CEC and relentless pursuit to combat piracy and armed robbery at sea. This agreement effectively reduced armed robbery in the Singapore Strait until the economic crisis in Indonesia in 1998. However, experience has shown that for such contracts to be more effective, ground police activities must be intensified and more challenging, considering that armed robbers and pirates are all based on land.

2- Similar agreements were made between Indonesia and Malaysia under the auspices of the Border Committee, which was concluded in December 1992, and in which a border agreement for practical cooperation (Marine Operations Planning Group) was also made to discuss, and plan strategies and maritime issues arising from the common borders should be resolved. This issue has strengthened the bilateral cooperation between these two countries in the fight against illegal activities. In addition, coordinated surveillance measures at sea by Malaysia and Indonesia in the Straits of Malacca to check armed robbery and other illicit activities at sea have been practical and helpful in strengthening efforts to achieve this goal.

3- Between Malaysia and the Philippines, a group called the Malaysia-Philippine Border Surveillance Coordination Group was formed, through which the executive agencies of Malaysia and the Philippines conducted border surveillance operations in maritime areas to prevent armed robbery and illegal activities at sea. According to this agreement, all border surveillance operations must follow the respective countries' laws and regulations and align with international rules. This coordinated/integrated operation proved to stop illegal cross-border activities and armed robbers in this part of the country. Other such collaborations were formed between Malaysia and Singapore, where the police departments of the two countries held a formal meeting to share and discuss maritime issues and criminal activities affecting both countries. The Royal Thai Navy also tried to establish good relations with its neighbors to protect their common interests at sea. They conducted joint patrols along their maritime borders, both in the Gulf of Thailand and the Andaman Sea, to prevent traffic, military, and other illegal actions in the sea. Thailand also reached an agreement with Vietnam regarding maritime borders, the contract that helped to solve the problems faced by the fleets of the two countries in the past.

However, little progress was made regarding the conclusion of the maritime contract with Myanmar and Colombia. (Djalal, 2003)

10. The competent authority to deal with the accusations of the perpetrators of pirates in Iranian law

In general, due to the lack of an international court that has the jurisdiction to deal with the accusations of pirates, according to what was discussed earlier, this is the responsibility of the domestic courts in the current situation. In recent years, by passing the necessary laws or updating them, many countries have provided the basis for the trial of pirates in their countries. In some cases, Iranian courts have jurisdiction over the accusations of pirates based on the principles of territorial, global and personal jurisdiction (based on the nationality of the perpetrator and the victim). Still, these jurisdictions do not include all forms of piracy. Therefore, in line with many countries, it is necessary to amend the laws of domestic jurisdiction in this field because of the recent developments of piracy in such a way that Iranian courts have the authority to deal with all cases and situations of committing piracy in international waters (Khaleghi and Kazemi, 2014).

The first speech: global competence

The subject of the principle of universal jurisdiction is crimes that have violated the international order (Moghadam, 2014). In general, the concept of this principle is the development of the jurisdiction of the country's domestic courts to deal with a crime that did not occur in the territory of the investigating country. Neither the accused is a citizen of that country, nor the victim, the victim, or the crime committed against that country. In other words, it is an actual international crime that arouses the international community's concern, and governments can deal with it without any of these links or dependent factors (such as the place of corruption, citizenship, etc.)

This principle puts him under Prosecution and punishment to prevent the criminal from going unpunished. (Although most countries in the world have recognized this principle, very few of them have implemented the said principle. Germany and the United States of America are among the leading countries in identifying and applying the said principle). (Faroghi, 2017) Therefore, universal jurisdiction is a distribution of judicial and legislative jurisdiction. All the world's courts will be competent to prosecute and punish only if the criminal is arrested in their jurisdiction. Of course, it should be noted that the universal jurisdiction is secondary, applied only if there is no higher

jurisdiction and also according to the principles related to the validity of the sealed or condemned order. (Hosseini-nejad, 2013)

The global jurisdiction granted to the government and their domestic courts by international law is considered mandatory. In such cases, governments not only have the right to exercise universal jurisdiction, but they also have the duty to either try or extradite the person accused of international crimes if they have access to it. (Hamed, 2014) However, in correctly implementing the principle of universal jurisdiction, there is an accidental element: the unintentional presence of the accused in the government's territory in exercising jurisdiction. (Dadashzadeh and Habibi, 2009)

Today, however, several lists of these crimes have been presented, but the most complete one, which covers both crimes and international crimes, was collected by Professor Bassiuni, which are:

Crimes of rape, sexual offences, illegal use of weapons, genocide, crimes against humanity, racial discrimination, slavery, torture, illegal medical experiments, piracy, crimes related to international air communication, unlawful use of letters, offences related to drugs, distortion and Forgery, destruction or theft of national antiquities, hostage taking, threats and use of force against internationally sponsored persons, bribery of foreign public officials, theft of submarine cables and international smuggling of obscene publications. Of course, Mr Professor Bassiuni has added two other categories to this list: 1- Theft of atomic weapons; 2- Environmental destruction. (If we want to find evidence of the international nature of these crimes, we must examine the numerous conventions that have been concluded in this field. For example, the Convention on hijacking or hostage-taking has recently added the crime of "enforced destabilization" to the list of international crimes, and therefore "enforced disappearance of persons" is subject to the principle of universal jurisdiction.

The first paragraph: Reflecting the principle of universal jurisdiction in Iran's criminal laws (Khaleghi and Kazemi, 2014)

Proceedings of Iran's courts when the crime occurred in open waters, and there is no connection between the location of the crime, the ship, and the injured crew, in this case, the only way to exercise jurisdiction by Iran's courts is to resort to the principle of universal jurisdiction. The focus of universal jurisdiction in Iran's criminal laws is provided in Article 9 of the Islamic Penal Code, approved in 2012. This article, which was specified in the Islamic Penal Law approved in 1370 and also in the revised Penal Law of 1352 with the same

context and terms and with few changes, states: "The perpetrator of the crimes found in any country according to a special law or international agreement and regulations will be tried in the same country. If he is found in Iran, he will be tried and punished according to the criminal laws of the Islamic Republic of Iran." The difference worth mentioning between the new regulation and the previous regulations is the clarification and addition of the phrase "international regulations" to Article 9, which was done intentionally to identify international custom as a source of universal jurisdiction. Explanation that based on the former law, since only two issues of "special laws" and "international covenants" were specified in Article 8, reference to other sources of international law, including international custom, could not be used to justify the jurisdiction of the country's courts based on the principle of universal jurisdiction. Because the country's courts could only establish and justify their authority by referring to special laws and international covenants. But since the provisions of international law are derived from various sources such as global and regional treaties, international custom and doctrine if based on international requirements originating from a source other than international treaties, such as custom, for a transnational crime of universal jurisdiction, it is recognized. Iran's courts can benefit from this provision by referring to Article 9 of the new law and dealing with this crime based on the principle of universal jurisdiction. (Khaleghi and Kazemi, 2014)

In Article 9 of the Islamic Penal Code, the legislator generally considers two main pillars as conditions for the trial and punishment of the accused in Iran. First, special laws or treaties or international regulations have given such permission. Second, the act is criminal and punishable according to Iranian law, and the phrase "will be tried and punished according to the laws of the Islamic Republic of Iran" has the same meaning. Obviously, if the act is not criminalized according to the law of Iran, it will not be possible to prosecute, try and punish the perpetrator. But the phrase "special law" specified in Article 9 seems vague and unclear. According to some authors, the legislator's intention of clarifying the wording of the particular law is the same law by which the Islamic Council approves international agreements following Article 77 of the Constitution. Because the international agreements after the parliament's approval are in the domestic law and have the same value and validity. Therefore, from now on, it can be said that they are internal law, and applying a special law to this law is without problems. But it seems that, as it has been said elsewhere, the meaning of special law is another law approved by the parliament and has specifically given Iran's courts the jurisdiction to deal with grave international crimes. The Iranian legislature has not approved it. (Khaleghi and Kazemi, 2014) Also,

contrary to the opinion of some authors who believe that the term "international treaties" in the discussed article means any treaty ratified by governments in the international arena, even if the Iranian government has not joined them. (Pourbafrani, 2016, 186). It should be said that treaties are those that Iran has become a member of, and only based on them can one vote on the universal jurisdiction of Iran's courts to try international crimes. Of course, in the case of international agreements, another problem can be seen in Article 9 of the law. International conventions regarding granting jurisdiction to member states operate in two ways. Some of them, which include a few cases, directly give jurisdiction to the courts of member countries without the need to approve any specific domestic law, such as the Geneva Four Conventions adopted in 1949, of which our country is a member. But the second category of these international documents, which include most of the international treaties, unlike the first category, requires domestic legislation to grant jurisdiction, such as the 1988 Convention on the Prohibition of Unlawful Acts Against the Safety of Shipping, for the exercise of universal jurisdiction by our courts based on these international treaties. In addition to Article 9 of the Islamic Penal Code, a special domestic law must be approved by the parliament to grant jurisdiction, which in the case of the vast majority of these documents, no special domestic law has been authorized. Therefore, our courts cannot exercise global jurisdiction over the international crimes mentioned in them simply by invoking Article 9 or these international treaties.

Regardless of the issues raised, another issue inferred from Article 9 of the Islamic Penal Code is the condition of the perpetrator's presence in the territory of Iran. Countries act in two ways regarding applying the principle of universal jurisdiction by their courts. Some do not consider the perpetrator's presence as a condition for using the code of universal jurisdiction regarding severe international crimes. Still, some countries, including most governments, consider the perpetrator's presence in their territory as a condition for applying universal jurisdiction and dealing with his charges. According to Article 9 of the Islamic Penal Code, our country is placed in the second category. The philosophy of the condition of the presence of the accused is that the purpose of granting universal jurisdiction to a state is to prevent the impunity of a criminal who has taken refuge there to escape punishment. Therefore, with the focus of this jurisdiction on the location of the crime and the nationality of the perpetrator or the victim, there must be a connection, however small, between the committed crime and the state claiming jurisdiction. The criterion for this connection is the presence of the perpetrator in the territory of that state, which is stated in the law. Islamic punishment is accepted.

Based on the discussed material, it can be concluded that Iranian courts can deal with international crimes based on the principle of universal jurisdiction when the transnational crime is committed outside the territory of the country's sovereignty because if the offense occurs inside the environment, the offense is subject to the principle of territorial jurisdiction. First, therefore, it will not be the turn of global competence. Secondly, an international treaty or regulation regarding universal jurisdiction over that crime exists. After ratifying that treaty, Iran enacted a law to apply the jurisdiction of Iranian courts over the abovementioned crime. Thirdly, the perpetrator must be present in the territory of Iran, and lastly, the act must be a crime according to Iranian laws. Therefore, in applying the principle of universal jurisdiction to severe international crimes, Iran's courts face many obstacles and legal gaps. Accordingly, in the current situation, they cannot deal with many cases of international crimes based on the principle of universal jurisdiction.

Second paragraph: Application of international jurisdiction over piracy by Iranian courts

However, before the new Islamic Penal Law was approved, we could say that because no unique mechanism has been foreseen for the introduction of international custom into domestic law and its implementation in national courts, then in the absence of related treaties, Iranian courts cannot try based on customary international law. And punish the accused of international crimes. The reason for this statement was that the few existing legal texts regarding the acceptance of international regulations by Iran's domestic laws were based on international conventions, and no specific restrictions were foreseen regarding the acceptance and absorption of the customary rules of international law in the domestic laws of our country. Therefore, as a result, Iranian courts could not be In a position to investigate a crime based on a global customary rule. They should consider themselves competent to investigate. Still, they should only establish their competence based on a legal text or an international convention approved by the parliament. But now, by adding the words "treaties" and "special laws", the problem above has been solved, and from now on, if universal jurisdiction is foreseen to deal with a crime according to international custom, Iranian courts will also have the authority to deal with it. In other words, the wording of the international regulations mentioned in the male article, in addition to international documents and agreements, also includes international customs.

The importance of this issue regarding the crime of piracy is doubled when we know that piracy is the first crime for which universal jurisdiction has

been established based on customary international law, and although this traditional rule was approved by the Convention on the High Seas (1958) and the Convention on the Law of the Sea (1982) has also entered contractual rights. Our country has not yet become a member of the two mentioned conventions. Therefore, if international custom is not accepted into the internal regulations of our country, Iranian courts will not have the jurisdiction to deal with the crime of piracy in any case. But in the current situation, it can be said that according to the provisions of Article 9 of the Islamic Penal Code, if pirates attack commercial or private ships with citizenship of other countries on the high seas or in places that are not under the sovereignty of any country, they commit theft, kidnapping, Even if the perpetrators and the victims do not have Iranian citizenship or the ship does not carry the flag of the Islamic Republic of Iran, Iranian courts will have jurisdiction over this crime.

One of the conditions for applying international jurisdiction by Iranian courts over piracy is the perpetrator's presence in our country. Of course, the manner and type of existence do not make a difference, but just company is essential. So this presence, in addition to including cases such as the executive and selective presence of thieves, also includes their forced transfer and forced company. Therefore, whether the defendant travels to Iran anonymously and is arrested and tried after being identified, or whether his plane suffers a technical failure while escaping Iran and is forced to make an emergency landing in Iran, the condition under discussion is met. Also, the presence of those accused of piracy in Iran can result from their arrest abroad by Iranian or foreign military forces and their transfer to Iran, such as Iranian warships patrolling the open waters, arresting them and transferring them to Iran. Or by finding out that the accused of piracy is on board a foreign ship or plane passing through the territory of Iran, or by stopping the boat or forced landing of the aircraft, arrest the accused of piracy.

Another condition for establishing universal jurisdiction is the criminality of the act in the claimant country in the country claiming jurisdiction. But does this condition mean that the criminal title in domestic law must be the same as the international crime for the subject? That is, can the courts of Iran only reach a crime when the criminal title of "piracy" exists in the criminal laws of Iran? The answer is harmful, and it is not necessary. In other words, although international crimes in terms of heinousness and horror are placed at a higher level than domestic law crimes, it is required to be punished more severely, even if there is no particular international crime title in domestic law and domestic criminal laws with Other titles have dealt with the criminalization of committed acts, domestic courts will have the jurisdiction to deal with

international crimes based on the principle of universal jurisdiction. Therefore, although the title of piracy does not exist in Iran's criminal laws, Iranian courts, after establishing their authority over the arrested piracy suspects and verifying their identities, punish the perpetrators based on the illegal titles in their domestic laws, such as robbery, kidnapping, and murder.

It is worth mentioning that based on the rule of prohibition of retrial, which is accepted in the domestic laws of most countries and many international documents, if the pirates have been tried and punished in a domestic or international court or a court of their charges If they have been tried and acquitted, they will not be able to be tested in any other court. This point, i.e. acceptance of the rule prohibiting retrial, is one of the principles of universal jurisdiction. But unfortunately, in Article 9 of the Islamic Penal Code, the Iranian legislator has not restricted the jurisdiction of Iranian courts in this regard. As a result, if Iranian courts arrest pirates in the territory of Iran, there is no obstacle to trying them on the assumption that they have already been tried and punished for the same act abroad. This is against justice and fairness and the requirements of a fair trial.

The last issue, related to domestic jurisdiction, is the artificial local jurisdiction of the Iranian court to deal with the crime of piracy. Obviously, regarding the crime in question, the rule of the jurisdiction of the court where the crime occurred is not decisive because, by assumption, the crime of piracy is located in a place that is not the territory of Iran's sovereignty. In other words, there is no Iranian court where the crime occurred, and no crime was committed in Iran. Therefore, determining the local jurisdiction of the court regarding crimes committed abroad requires special legislation, which is done by Article 319 of the Criminal Procedure Law approved in 2012, which stipulates: "According to the law, Iran's courts have jurisdiction over the charges of persons who commit crimes outside the jurisdiction of the Islamic Republic of Iran, if they are Iranian nationals, in the court of the place of arrest, as the case may be, and if they are foreign nationals, as the case may be, It will be dealt with in Tehran court."

11. International Jurisdiction in Indonesian Judicial System

For Indonesia, piracy is a challenge. Indonesia's vast maritime areas create vulnerabilities for pirates and other criminals at sea to exploit. Ensuring sufficient knowledge of the scope of piracy around Indonesia to adopt an appropriate strategy remains an ongoing challenge for Indonesian authorities. It

is said that countering piracy may be less critical for Indonesia. Patrolling Indonesia's extensive maritime borders, dealing with maritime border disputes, and combating maritime crime and environmental destruction have been reduced due to a lack of funding and poor levels of patrol vessels. In addition, Indonesia is sensitive to guaranteeing its sovereignty, and one of the reasons for the increase in piracy in Indonesia can be seen because of the weak approach of countries outside the region, which may harm the problems at hand. (Monji, 2014)

As stated, Indonesia has territorial disputes with some ReCAAP member states. ReCAAP has overcome this potential even though the issue of security and control of the crime of piracy conflicts with a vital principle of non-interference in the internal affairs of another country and respect for independence and sovereignty. In addition, by setting a common goal to combat piracy, the operational regime that allows member states to seriously exercise their jurisdiction and focus on ReCAAP to avoid political risks was carefully considered. ReCAAP now operates as a secretariat in Southeast Asia that collects and shares information, issues regular reports, and coordinates capacity building. In addition, Indonesia and Malaysia can use this function to prioritize and focus their assets on problems and exercises of sovereignty and jurisdiction. In addition, if the two countries are members of the UN ReCAAP, it is possible that regional powers could indirectly intervene as a form of arbitration in political cases to end disputes between them in the exercise of jurisdiction. Of course, the leading position of ReCAAP should be maintained. With a neutral and non-interventionist approach, but with the view of a third-party mediator, the differences between the neighbouring countries in the Strait of Malacca may disappear or reduce the political problems as a guard. Regional powers can also improve, and with this approach, trust in the fence and increase interoperability through intergovernmental cooperation, creating operational expertise in regional navies, deepening relations, etc., and improving the ability to implement the program, which facilitates this partnership performance. (Monji, 2014) In the field of seas, piracy is the main crime subject to international jurisdiction. The doctrine of universal jurisdiction allows all states to try certain criminals who have committed international crimes, even if the criminal and the victim have no connection with the prosecuting state. Before the escalation of the piracy crisis in recent years, the applicability of this rule to piracy seemed inapplicable. Still, the time has come for the new piracy perpetrators to be tried under universal jurisdiction, like the perpetrators of other crimes.

On the other hand, governments are also facing problems in using this legal authority. Among them, we can mention some international law norms, especially human rights norms, which have increased since the approval of the regulations related to piracy. On the other hand, today's piracy occurs in a different way than it did in the past. This has caused the existing international documents to deal with and suppress piracy, unable to respond to current needs. (Mousavi et al., 2017)

One of the examples of the principle of universal jurisdiction, in this case, is the incident and Prosecution of the Rainbow Alondra, which was a Japanese oil tanker with a Filipino crew under the command of two Japanese officers. The tanker was sailing from Indonesia to Japan. When the pirates hijacked the ship, the Indian Navy later captured the pirates and towed the vessel to India for trial and conviction by an Indian court. In the same way, the United States and England claimed to transfer the pirates. Because the captured pirates were in the Gulf of Aden and for trial, Kenya asserted its universal jurisdiction as a party to UNCLOS. As can be seen, Indonesia, as one of the parties, did not exercise its jurisdiction or claim jurisdiction, which shows the Indonesian authorities' reluctance to exercise jurisdiction.

D. CONCLUSIONS

In the last decade, the Islamic Republic of Iran has faced the security threat of piracy and has suffered much damage. Therefore, the piracy crisis in international waters has become one of the major crises facing Iran's economy. Iran, like other members of the international community, and following the resolutions of the Security Council, has met the threat of piracy, especially the pirates of Somalia and Indonesia, and through its two organs, the Navy, the Army and the Maritime Ports Organization, has resorted to a combination of legal and political measures to deal with it. The point that should be mentioned in general is that the judicial pursuits and the trial and punishment of pirates due to their criminalization in the domestic legal system of countries and requiring governments to arrest, prosecute and convict pirates is an obvious duty that the international community should commit to. In this regard, although the legal system of the Islamic Republic of Iran has not yet tried to criminalize this sinister phenomenon and criminalizing piracy, considering that Iran is a member of the Convention on the Prohibition of Illegal Acts against Maritime Security, it is one of the most important tasks of this treaty. Iran's reluctance to criminalize the crime of piracy in domestic laws, it must be said

that the domestic courts are forced to use the existing provisions, the general provisions of which are stated in articles 3 to 9 of the Islamic Penal Code.

On the other hand, the courts can punish the perpetrators of piracy by using related crimes, including armed robbery, banditry on the roads and streets, kidnapping and murder and intentional assault. (Although some of the behaviours committed by pirates may remain unpunished because they do not comply with any of the crimes in the country.) Therefore, as shown in the two cases, the courts must implement justice. However, the lack of criminalization of piracy in Domestic laws should be satisfied with the same articles of the Islamic Penal Code. The point that needs to be mentioned is that Iran's criminal justice system is tried to respect the rights of the perpetrators of the crime of piracy. According to the criminal institutions (included in the Islamic Penal Code and the Criminal Procedure Law), including the issue of suspension, Prosecution, abandonment of Prosecution, suspension of execution of punishment, the system of parole and parole, etc., the judgments of the courts have made it so that if the conditions for the perpetrators of piracy are met, they will benefit from these criminal institutions. In this regard, there is no difference between domestic and foreign perpetrators.

According to the survey conducted by the International Maritime Court, we are witnessing an increase in piracy in Indonesia. According to the AGCS report citing data from the International Maritime Court, piracy cases in Indonesia increased sevenfold between 2008 and 2016, contrary to the global decrease in attacks. The waters of Southeast Asia are troubled by piracy in Indonesia, which has made it dangerous for ships to travel in this region since the arrival of Europeans. The term piracy in Indonesia includes cases of stealing cargo and fuel tanks from ships of other countries and the high level of piracy within the country itself. Therefore, according to the opinion of the International Maritime Court, the number of ships attacked in Indonesia is increasing. Because the pirates can escape from the side passages and prevent them from being detected by hiding in the islands around that area, the area around Indonesia alone has more than 1700 islands and small tropical islands where the pirates can take shelter.

On the other hand, there are many problems related to the legal system in Indonesia, many laws and regulations conflict with each other, and because the legal system (including the courts) sometimes does not work effectively, it is difficult to resolve these conflicts. Furthermore, the punitive reaction of the Indonesian authorities towards the arrested pirates is also very mild and superficial, and this issue has increased the international community's concern.

Piracy is a crime that should be dealt with immediately. The International Maritime Committee and various organizations have taken their part in solving this problem. Still, implementing justice will be complicated without responsible and efficient domestic governments.

Such weakness will lead to the further development of pirate activity. Therefore, preventive measures should be implemented as soon as possible to protect not only the capital of business associations but also the lives of people, ship crews and people who have become pirates under the influence of poverty and harsh living conditions. Therefore, based on the results of the research, holding joint courses for officers, especially young officers of the navies of Iran and Indonesia, cooperation in fighting against maritime terrorism and piracy and information exchange with the Iranian and Indonesian navies to fight against maritime terrorism and piracy, and Cultivation and trade of lawyers and judges proficient in marine sciences between the two countries is suggested.

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