

² firdaus.mokhlis2019@gmail.com

This paper addresses two major issues. First, it evaluates *Hirabah* as one of the *hudud* crimes in Islamic criminal law. *Hirabah* is an act of violence that transgresses the rights of a person. The victim in this act is not limited to the victims who are the subject of violence but to public in general. The act of *hirabah* has made the public to live in fear, if not for a long time but perhaps for some time. *Hirabah* is not limited to armed robbery such as bank robbery, but it can be extended to the sea such as piracy. It can also occur on the air such as hijacking an airplane. In other words, the crime of *hirabah* is wide, in terms of place, time and act. The keyword for the act of *hirabah* is fear. The discussion on the requirements or elements to constitute *hirabah*, the conditions of the *Muharib* (the person who commits *hirabah*), exceptional cases, punishments as well as juristic views on issues related to this crime will be discussed. This paper also analyses if the extent of two crimes, piracy and armed robbery at sea, are to be categorised as *Hirabah*. The paper concludes by recommending policies and mechanisms to overcome *hirabah*.

Keywords: Hirabah-Piracy-Armed Robbery- Islamic Law

[illegible]

مَدَحٌ وَسُؤْرٌ ذُرِّيَّةٌ رَاحَتٌ مُخَمَّرَةٌ رِبْدَةٌ دُرٌّ زَوْجٌ

١٥٤٠

[illegible][illegible]

1. INTRODUCTION

Shariah is sent by Allah through Prophet Muhammad SAW to mankind. Shari'ah is comprehensive, contemporary, and flexible to be applied to all, Muslims and non-Muslims alike. The objectives of Shari'ah are to protect individuals living in the world and to ensure that their rights are protected with proper administration, rights mechanism, and legal measures so that *Maslahah*, peace, and justice prevail in society. As time passes, it becomes more important and more challenging for Muslim scholars to continue researching and promoting the timeless aspects of Islamic law, especially Islamic criminal law, so that its applicability in every facet of life can be understood, appreciated, and applied in this modern world. Shari'ah contains various kinds of laws such as family law, evidence, and procedural laws, and criminal laws. Islamic criminal law with fixed crimes and punishment, which is called *Hudud* crimes and hudud punishments. Islamic criminal law together with its Islamic punishments are to provide security and protection to every individual in a society. Islamic punishments, to a certain extent, have been proven to curb the number of crimes happening in one's country. In Islamic criminal law, one of the *hudud* crimes which provide a few punishments is *hirabah*, a crime expressly mentioned in the Quran. Some scholars consider *hirabah* to mean highway robbery and to others it means wider than robbery, that may lead to chaos and destruction of one's country as well its surrounding which include the air and water. The other unique point that exists in the crime of *hirabah* is the aspect of forgiving the *Muharib* (the persons who committed the *Hirabah*) and exempt them from receiving the *hadd* punishments due to the voluntary submission to the authority.

1.1 MEANING

Hirabah can be translated in English as an act of terrorism.⁷² According to Muhammad Hashim Kamali, *hirabah* is also considered to be the nearest legal concept to terrorism.⁷³ *Hirabah* also can be interpreted as any acts of terror.⁷⁴ In the Quran, the act of *hirabah* is literally interpreted as making war or waging war.⁷⁵ Generally speaking, *hirabah* is a form of violence which terrorises the victims and public at large and leaves them in the state of fear and insecurity. The impact of *hirabah* eventually leads to the destruction or mischief to the earth. The word *Fasad* (destruction or corruption) is used in the Qur'an to indicate the impact of

hirabah in terms of security, economy and political instability to one's country.

Classical Muslim scholars have given various definitions of *Hirabah*. Some would say that is a major theft (*Sariqah Kubra*) as opposed to the crime *sariqah*, which entails amputation of the hand. Some would interpret it as highway robbery or brigandage as what happened in the era of the Prophet SAW prior to the revelation of Surah al-Maidah verses 33 to 34. Some jurists see *hirabah* as the act of using armed force, in deserts or otherwise far from habitation, for the purpose of taking property.⁷⁶ According to Abd al Barr, a Maliki jurist defines a *Muharib* as anyone who disturbs free passage in the streets and renders them unsafe to travel, striving to spread corruption in the land by taking money, killing people or violating what Allah has made it unlawful is guilty of *hirabah*, be he a Muslim or a Non-Muslim, free or slave and whether he actually realises his goal of taking money or killing or not.⁷⁷ According to Imam al Nawawi, a Shafei jurist, whoever brandishes a weapon and terrorises a street inside or outside a city must be pursued by the authorities because if they were left unmolested, their power will increase and through their killing and taking of money, corruption will spread.⁷⁸

It is interesting to note that *hirabah* to a certain extent can be seen from a non-criminal aspect that covers any spreading of gross corruption on earth such as the poisoning of drinking water, food, climate change, wreaking great havoc by arson or flood or great criminal damage to the peace and society or economy of a state.⁷⁹ These situations are considered as aggravating circumstances that could lead to the destruction of one's country in terms of economy, society and eventually peace and justice in the country and community.

2.1 INJUNCTION FROM THE QURAN & HADITH

The principal reference to *hirabah* in the Quran is found in Surah al-Maidah verse 33 to 34. The verse reads as follows:

Surah al-Maidah verse 33-34

⁷² Hameedullah Mohd Asri and Muhd Khalil Ruslan, 'The Crime of Hirabah: Approach, Justification & Significance' (2020) 28(3) Jurnal Syaiah 410; Sherman A Jackson, 'Domestic Terrorism in the Islamic Legal Tradition' (2001) 91 The Muslim World 293, 295.

⁷³ Muhammad Hashim Kamali, 'Terrorism, Banditry and Hirabah: Advancing Shariah New Perspectives' (2017) 8(1) Islamic Civilisational Renewal 11.

⁷⁴ Frank E Vogel, 'The Trial of Terrorism under Classical Islamic Law' (2002) 43 Harvard International Law Journal 53, 58.

⁷⁵ Abdullah Yusuf Ali, The Holy Quran: Text and Commentaries [no publication details provided].

⁷⁶ Vogel (n 3) 58.

⁷⁷ Cited in Jackson (n 1) 295.

⁷⁸ Ibid

⁷⁹ Muhammad Ata al Sid, Islamic Criminal Law: The Hudud (Al Basheer Publications 1996) 62.

The punishment of those who wage war against Allah and His Apostle and strive with might and main for mischief through the land is: execution or crucifixion or the cutting off of hands and feet from opposite sides or exile from the land: that is their disgrace in this world and a heavy punishment is theirs in the Hereafter. Except for those who repent before they fall into your power: in that case know that Allah is Oft Forgiving Most Merciful

In one hadith reported by Anas Bin Malik, some people belonging to the tribe of uraynah came to Allah's messenger in Madinah and found the climate in Madinah unsuitable. So, Allah messenger said to them if you so like you may go to camels of sadaqah and drink their milk and urine. They did so and were recovered. They then fell upon the Prophet SAW. This news reached the Allah's Messenger, and he sent (people) on their track. They were finally (brought) and handed over to the Prophet SAW. He (the Prophet SAW) got their hands and feet cut off. The Prophet SAW also put out their eyes and thrown them on the stony ground until they died.⁸⁰

The above hadith is subject to the interpretation of the jurist in terms of who is Urayniyyun, whether they are Muslims, Non-Muslims, or apostates. Regardless of who is the group of people where the verse was addressed to, the most important significance of the verse (surah al Maidah: 33-34) is the expressive provision on the crime of hirabah and its exceptional case to the Muharib.

These two evidences are among the authorities from the Quran and hadith on the crime of hirabah as well its punishments. These two texts are the proof that *hirabah* is one of the hudud crimes since the crime and punishments are fixed and mentioned in the Quran or in the hadith. Or may be both. For example, the crime of adultery and theft the punishments are mentioned in both Quran and Hadith.

3. PUNISHMENT FOR MUHARIB

As known, controversies and debates over both the concept and execution of Islamic criminal law, particularly

hudud, have raged for years. This occurred due to stereotypes claiming that the punishments are inhuman, cruel, and irrelevant to be adopted. In fact, the severity of the Islamic penal system is aimed at discouraging criminal behaviour. If the criminal knows the anguish and pains, he will bring to himself, he or she may abstain from committing the crime.⁸¹ As far as the crime of *hirabah* is concerned, Allah SWT has mentioned its punishment in verse 33 of Surah al-Maidah, which can be translated as,

The punishment of those who wage war against Allah and His Messenger and strive with might and for mischief through the land is: execution, or crucifixion, or the cutting off of hands and feet from opposite sides, or exile from the land: that is their disgrace in this world, and a heavy punishment is theirs in Hereafter.

Unlike other *hudud* crimes, *al-Qur'an* prescribes four punishments against the person liable for *hirabah*: amputation of hand and foot, execution, crucifixion and banishment.⁸² In fact, *hirabah* is a crime that consist of one or a combination of several acts including threatening the road without taking property or committing murder, taking property, committing murder or taking property together with committing murder. As a result, the punishment of this type of crime will depend on which type of illegal act that has been committed before. The punishments in al-Maidah 33 are not prescribed for any crime, but a set of punishments for the crime of *hirabah*. Selection of punishment depends upon seriousness and gravity of crime as other factors.⁸³ The *shariah* court is at liberty to determine the ratio decidendi to suit the crime.⁸⁴ Table 5 shows the difference of opinions from several schools of thoughts pertaining to the punishment of *hirabah*.

TABLE 5: PUNISHMENT OF HIRABAH VIEWED BY SELECTED SCHOOLS OF THOUGHTS⁸⁵

⁸⁰ Cited in Nik Rahim Nik Wajis, 'The Crime of Hiraba in Islamic Law' (PhD thesis, Glasgow Caledonian University 1996) 62; Sahih Muslim, trans Abdul Hamid Siddiqi (Sheikh Muhammad Ashraf) 893.

⁸¹ Etim E Okon, 'Hudud Punishments in Islamic Criminal Law' (2014) 10 European Scientific Journal 227.

⁸² Muhammad Hameedullah Md Asri and Md Khalil Ruslan, 'The Crime of Hirabah: Approach, Justification and Significance' (2020)

28(3) Jurnal Syariah 383, 384
<https://doi.org/10.22452/js.vol28no3.3> accessed [date].

⁸³ Ibid p. 401.

⁸⁴ Okon (n 10) 234.

⁸⁵ Hendun Abd Rahman Shah and Suraiya Osman, 'The Universality of Hadd Punishment with Special Reference to Piracy and Hirabah' (2017) 3 Malaysian Journal of Syariah and Law 14–15
<https://doi.org/10.33102/mjssl.v3i1.3> accessed [date].

Schools of thoughts/ Offences	Hanafi	Maliki	Syafi'i	Hanbali
Threatening the road	Expelled (an nafyu)	The Ruler to choose the appropriate punishment i.e discretion of the Ruler	Ta'zir or be expelled	Expelled (an nafyu)
Taking the property	Cutting off hands and feet from opposite sides	Discretion of the Ruler but should not choose expelled	Cutting off hands and feet from opposite sides	Cutting off hands and feet from opposite sides
Murder	Be killed as been prescribed under hadd punishment	The Ruler must choose either to kill the offender without crucify or to punish the offender with both	Be killed as been prescribed under hadd punishment	Be killed as been prescribed under hadd punishment
Committed murder together with theft	The Ruler may choose either to cut off the hands and feet on alternate sides and impose death penalty and be crucified after that or not to cut the hands and feet but impose death penalty straight away for that offence	The Ruler may choose either kill or crucify first followed by kill	Death penalty and crucify	Death penalty and crucify

3.1 MAIN ELEMENTS OF HIRABAH

There are four main elements that characterise the act of *hirabah*. The first element is that the act was made publicly,⁸⁶ which means it happened in front of the victim. As opposed to the crime of theft (*sariqah*) where it happened secretly, without the knowledge and consent of the victim. The victim was not aware that his property was taken away until he realised it later. On the other hand, in the crime of *hirabah*. The victim was aware that he was being terrorised since the incident happened before him.

As a result of the act that was made publicly, here comes the second element that is the element of fear. Since it happened in front of the victim, it instilled fear in the victim since the victim has witnessed that he is now the subject of *hirabah*. The third element is the use of force. There must be use of force by the *Muharib* to the victims. The use of force is not limited to the use of weapons. According to Imam Malik, the use of force is not limited to dangerous weapon, but it can be any kind of force including being threatened with his physical power could warrant to use of force.⁸⁷ This is the reason why some jurist classified rape as one type of *hirabah* because of the use of physical force to the rape victim.⁸⁸

⁸⁶ Muhammad Hashim Kamali, 'Terrorism, Banditry and Hirabah: Advancing New Shariah Perspectives' (2017) 8(1) *Islam and Civilisational Renewal* 17.

⁸⁷ Ibid, Nik Rahim Nik Wajis 63.

⁸⁸ Azman Mohd Noor, 'Punishment for Rape in Islamic Law' (2009) 5 *MLJ* cxiv 1–9.

⁸⁹ Hameedullah (n 11) 386–87.

The next element, which was discussed by the jurists, is on the issue of place where the *hirabah* crime has occurred. Some jurist opined that the place of *hirabah* is in a desert given the fact that the case of *hirabah* that happened in the era of the Prophet SAW took place in a desert. Some jurists opined that it could happen at any place as long as there is no possibility to seek help⁸⁹ One may say that regardless of the place, the most significant aspect here the difficulty for the victim to seek for help, whether it happened in a building, air or water.

Another issue which was discussed among the jurists is the gender of *Muharib*. Majority of the jurists are of the opinion that the *Muharib* can be male or female. However, Imam Abu Hanifah and imam Al Shaybani hold that female *Muharib* is not entitled for the had punishment under *hirabah* due to the incapability (perhaps at that time) to use physical power and spread fear to the victims and public at large.⁹⁰

4. PIRACY AND ARMED ROBBERY IN SOUTHEAST ASIA

Piracy and armed robbery need to be defined for a proper understanding of the act. The definitions are given below.

4.1 Definition of Piracy and Armed Robbery

4.1.1 Statutory Definition

Piracy has a long history and has re-emerged as a security threat in the contemporary period.⁹¹ According to Article 101 of the United Nations Convention on Law of the Sea (UNCLOS), piracy has been defined as-

(a) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:

(i) on the high seas against another ship or aircraft or against persons or property on board such ship or aircraft.

(ii) against a ship, aircraft, persons or property in a place outside the jurisdiction of any State.

(b) any act of voluntary participation in the operation of a ship or of an aircraft, with knowledge of the facts making it pirate ship or aircraft.

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

The International Maritime Organisation (IMO) and the International Maritime Bureau (IMB) are the two main

⁹⁰ Kamali (n 15) 17–18.

⁹¹ Carolin Liss, *Assessing Contemporary Maritime Piracy in Southeast Asia: Trends, Hotspots and Responses* (Peace Research Institute Frankfurt (PRIF) 2014) 2 https://www.hsfr.de/fileadmin/HSFK/hsfk_downloads/prif125.pdf accessed [date].

organisations which are concerned with the issue of piracy.⁹² As a body under the United Nation, IMO, despite adopting the definition of piracy prescribed under UNCLOS, also define armed robbery in Resolution A.1025 (26) “Code of Practice for the Investigation of Crimes of Piracy and Armed Robbery against Ships” as

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

(ii) any act of inciting or of intentionally facilitating an act described above

Thus, it can be simplified here that the obvious distinguishing factor between both piracy and armed robbery of ships is where the crimes have occurred. Piracy refers to illegal acts of violence committed on international water i.e high seas and areas beyond the jurisdiction of any state, meanwhile, the term ‘armed robbery’ is applicable if the crime occurred on internal water.

4.2 International Legal Framework on Piracy and Statistics

At the international level, anti-piracy measures have been addressed by international conventions and the 1982 UNCLOS gave each state the right to govern piracy under their national legislation.⁹³ In the context of Malaysia, the Courts of Judicature Act of 1964 and the Penal Code shall be used as the pertinent local laws since there is no such specific Act that addresses the crime of piracy in Malaysia in detail. According to the ICC-IMB Piracy and Armed Robbery Against Ships Report 2021, there have been 132 reported incidents of piracy, including 115 vessel boarded incidents, 11 attempted attacks, five fired at incidents, and one vessel hijacked incident. Table 1 shows the comparison of the type of incidents occurring at the global level from 2017 to 2021. It can be seen that the hijack cases are less in 2019-2021. from table 1. Table 2 on the other hand provides data about the different kinds of arms that were used in incidents from 2017 to 2021. This shows that the nature of piracy is the use of armed force. As far as maritime piracy is concerned, the world has historically paid less attention to Southeast Asia than it has to Somalia, which has caused significant economic damage. The World Bank estimates that over 179 ships were taken

hostage by Somali pirates, who received between US\$335 million and US\$413 million in ransom. However, after the publication of the 2013 IMB piracy statistics which showed that Southeast Asia was again the most pirate-prone region and a spate of attacks on tankers in 2014, piracy in Southeast Asia were back in the news.⁹⁴ Southeast Asia, which consists of eleven countries and is seen in Map 1 below, has been identified by international organisations as one of the world’s “hotspots” for issues related to piracy. At present, there are two kinds of maritime pirates in Southeast Asia.⁹⁵ Opportunistic Sea robbers are the first category; they are unorganised, ill-equipped groups of persons and commit crime within small, local areas. Their attacks are not well thought out, and their motives are short-term gains. Cash and items that are simple to carry are the most sought-after loot. The second type of piracy, on the other hand, consists of sophisticated, well-organised pirate groups that meticulously plan their attacks by using advanced technologies to target the cargo ships.

TABLE 1: COMPARISON OF THE TYPE OF INCIDENTS, 2017-2021

CATEGORY	2017	2018	2019	2020	2021
Attempted	22	34	17	20	11
Boarded	136	143	130	161	115
Fired upon	16	18	11	11	5
Hijack	6	6	4	3	1
Total	180	201	162	195	132

Source: ICC-IMB Piracy and Armed Robbery Against Ships Report 2021

⁹² A Amri, ‘Combating Maritime Piracy in Southeast Asia from International and Regional Legal Perspectives: Challenges and Prospects’ (Paper presented at the Southeast Asia Rising! Proceedings of the 5th International Conference on Southeast Asia, Kuala Lumpur, Indonesia, 11–13 December 2013).

⁹³ Ibid

⁹⁴ Liss (n 20) 12.

⁹⁵ Lukasz Stach, ‘Neverending Story? Problem of Maritime Piracy in Southeast Asia’ (2017) 7(12) International Journal of Social Science and Humanity 724 <https://doi.org/10.18178/ijssh.2017.7.12.915> accessed [date].

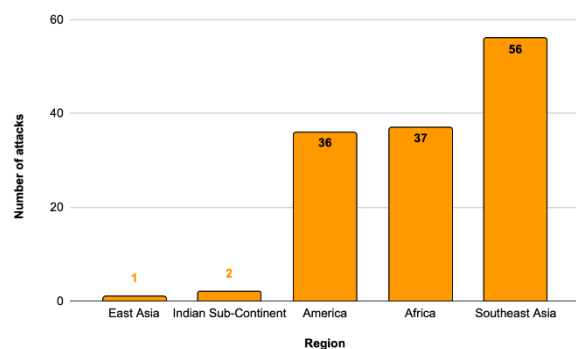
TABLE 2: TYPES OF ARMS USED DURING INCIDENTS, 2017-2021

CATEGORY	2017	2018	2019	2020	2021
Guns	52	56	47	69	34
Knives	44	36	36	46	38
Not stated	80	104	74	76	56
Other weapons	4	5	5	4	4
Total	180	201	162	195	132

Source: ICC-IMB Piracy and Armed Robbery Against Ships Report 2021

Based on Table 1, the data reported each year displays a varied pattern, with an upward and downward tendency over the course of five years. The decrease in number however does not affect the percentage of the piratical act committed in Southeast Asian waters.⁹⁶ According to IMO, piracy reports in 2000 and 2001, summarily, the largest number of attacks had occurred in the Malacca Straits and in the Indonesian waters.⁹⁷ The incident totals per region from January to December 2021 are further displayed in Chart A. Southeast Asia has reported 56 out of 132 attacks in 2021. The detailed figure of both acts and attempted incidents of piracy and armed robbery against ships in this region has been presented in Table 3 below.

CHART A: TOTAL INCIDENTS PER REGION, JANUARY-DECEMBER 2021

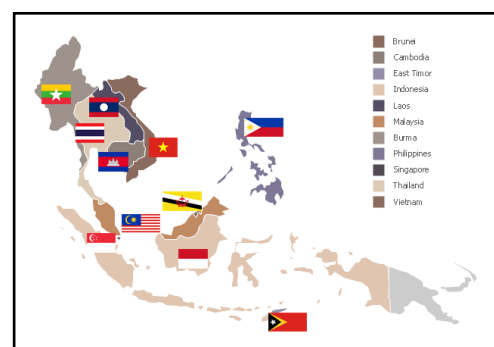


⁹⁶ Amri (n 21).

TABLE 3: ACTS AND ATTEMPTED INCIDENTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS IN SOUTHEAST ASIA, 2017-2021

LOCATIONS	2017	2018	2019	2020	2021
Indonesia	43	36	25	26	9
Malacca Strait	0	0	0	0	1
Malaysia	7	11	11	4	2
Philippines	22	10	5	8	9
Singapore Straits	4	3	13	23	35
Thailand	0	0	0	1	0
Total	76	60	54	62	56

Source: ICC-IMB Piracy and Armed Robbery Against Ships Report 2021



Map 1

Country	CPI Rank	Index score
Cambodia	157/180	23/100
Indonesia	96/180	38/100
Laos	128/180	30/100
Timor-Leste	82/180	41/100
Malaysia	62/180	48/100
Myanmar	140/180	28/100
Philippines	117/180	33/100
Singapore	4/180	85/100
Thailand	110/180	35/100
Vietnam	87/180	39/100

4.3 Factors that Lead Southeast Asia to Become Piracy-prone

There are several reasons that lead the Southeast Asia region to be subjected to maritime piracy and among them is the geographical factor. Huge (and difficult to control effectively) territory, thousands of islands (sometimes with rugged coastlines), many rivers, bays, caves and straits, with land often covered by a dense jungle, is a convenient place for

⁹⁷ Ibid.

piracy. Pirates may not only hide themselves easily somewhere on the coastline, but also be more likely to escape successfully.⁹⁸ The challenge for the authorities to effectively monitor each area is shown in some ways by the fact that this region is made up of thousands of islands. Furthermore, Southeast Asia is home to six of the top 25 busiest ports in the world, including Tanjung Priok in Indonesia, Tanjung Pelepas and Port Kelang in Malaysia, Singapore, Manila in the Philippines, and Laem Chabang in Thailand. Second, it is also important to acknowledge that state corruption contributed to piracy. Nearly every Southeast Asian nation suffers from a serious corruption problem and this somehow will affect the security force, in which it weakens the state's ability to curb maritime piracy and armed robbery. Table 4 below shows the corruption perception index in Southeast Asia. The table makes it evident that only Singapore is ranked above the global average and that the majority of Southeast Asian nations struggle with substantial corruption problems.

TABLE 4: CORRUPTION PERCEPTION INDEX IN SOUTHEAST ASIA COUNTRIES 2021

Country	CPI Rank	Index score
Cambodia	157/180	23/100
Indonesia	96/180	38/100
Laos	128/180	30/100
Timor-Leste	82/180	41/100
Malaysia	62/180	48/100
Myanmar	140/180	28/100
Philippines	117/180	33/100
Singapore	4/180	85/100
Thailand	110/180	35/100
Vietnam	87/180	39/100

Source: Corruption Perception Index 2021

The presence of major ports in Southeast Asia, combined with the region's strategic location, would further contribute to the third reason why this area attracts maritime piracy, which is its maritime traffic. According to the Review of Maritime Transport 2021 by the United Nations Conference on Trade and Development (UNCTAD), Asia continued to be the world's greatest supplier of seafarers, indicating its dominance in international maritime trade. Every kind of ship, from tiny fishing boats to supertankers, may be found in this region.⁹⁹ This affirmed the idea that organised gangs and opportunistic marine robbers both find this area to be advantageous.

4.4 Impacts of Piracy and Armed Robbery

The international community has come to recognise piracy and armed robbery at sea as a serious danger because of the significant negative effects it has on the economies, environments, and political stability of the affected nations. Regarding economic issues, piracy will make foreign ships reluctant to stay at specific ports because doing so will prolong their route and increase the probability that they will be subject to piracy attacks. As a result, the nation won't be able to collect its customs duty. Furthermore, costs of goods to the customer may have increased due to the losses directly incurred by the attack.¹⁰⁰ This happened because of the fact that once piracy occurs, the shipping company would have to pay for any damage or pay the ransom sought by the pirates, which may force the company to raise the prices of the goods for the customers. In addition, maritime piracy can result in environmental problems including oil spills and water contamination. The attacks that could lead to the consequences could be in the form of taking over ships laden with chemicals without competent seamen, intentionally mishandling the ship or also with the goal to scuttle the ship into an ocean oil rig.¹⁰¹ The quality of the ocean's water will be impacted by the oil spill, endangering the lives of marine life and plants. In addition to physical harms, humans were also victims of adverse economic consequences by environmental disasters.¹⁰² This happened because of the oil spill, which will result in the fishermen losing profit. Additionally, maritime violence like piracy and armed robberies at sea will impact how the governments' political relations are with one another. Foreign investors, especially shipping companies, will be affected by this potential threat to lose confidence in the maritime administration of a particular nation and opt out of using the usual sea routes. When a country's efforts in combating piracy is seen not to have resulted in a decrease trend, other countries would have the perception that the enforcement is corrupted, in the sense that the enforcement agencies are having some kind of collaboration with the pirates.¹⁰³

4.5 ANALYSIS

Based on the foregoing discussion, it is justified to say that piracy and armed robbery at sea are categorised under hirabah in Islamic criminal law. The existence of two significant elements of Hirabah that is the use of force and the act of terrorising the victims and other people in these two crimes. As a matter of fact, these two crimes are the same thing in

⁹⁸ Ibid.

⁹⁹ Stach (n 24) 727.

¹⁰⁰ Nurulizwan Zubir, 'Maritime Violence: Implications to Malaysia' (2012) 5(1) Arena Hukum 49

<https://doi.org/10.21776/ub.arenahukum.2012.00501.6> accessed [date].

¹⁰¹ Ibid p. 50.

¹⁰² Ibid

¹⁰³ Ibid p. 51.

Islamic law. However in International law, piracy and armed robbery are different due to the where the crime occurred either at international sea or internal (local jurisdiction) sea.

In piracy and armed robbery at sea there was use of force such knives, guns and other weapons. The motive and the criminal intention of these two crimes is to take the property from the victims.

The impact of piracy and armed robbery at sea to one's country, for example in Somalia, is the global economic development as well as efficiency loss due to the rerouting of shipping networks which would be otherwise uneconomical.¹⁰⁴ In South east Asia, negative impacts of maritime piracy is the disruption of the global economy and imposes considerable cost on international commerce and tax payers, thus inhibiting international trade.¹⁰⁵

The element of place which was discussed by some jurists can be ruled out as one of the fundamental elements to constitute hirabah. The impacts of piracy and armed robbery at sea or at any place that could affect the community at large in terms of their safety, peace and harmony is significant to a nation regardless of where those crimes took place.

In terms of the punishment for Muharib, the authority may choose the opinions of some jurists who opined that the punishment to be inflicted to the muharib based on the nature of the criminal act done. How serious the crime would be to the victim and public at large, such as robbing and killing the victims then the punishment would be death penalty. Perhaps, the authority decides to choose the opinion of Imam Malik where the punishment for the muharib is left to the discretionary power of the court

5. CONCLUSION

Both acts of piracy and armed robbery are recognised as serious threats to the international community since they will have a big influence on many important sectors around the world. Southeast Asia is prone to piracy due to a number of factors ranging from the wide income gap among its coastal states to its busy, narrow shipping, all of which makes ships travelling through the region a target for attack.¹⁰⁶ In proposing ideas to combat this issue, it is important to emphasise that complete eradication of maritime piracy in Southeast Asia seems impossible at the moment.¹⁰⁷ This is so

because a variety of factors have made this area favoured with pirate gangs. To ensure the security of this area, all nations in Southeast Asia must work together and make full commitments. The relevant nations must come to an agreement on an appropriate legal framework. Arms race and security dilemma should be set aside.¹⁰⁸ The governments are also urged to address the issues of corruption and poverty since uncertain economic revenues and a serious worldwide economic crisis brought on by the Covid-19 pandemic will likely encourage individuals to engage in unlawful activities like piracy. Last but not least, the maritime agencies as well as ship owner companies need to follow the provided security procedures as well as regularly reviewing the current security strategies. The ship crews are supposed to be well trained in understanding the various types of possible threats at sea and carry out a voyage specific threat and risk assessment prior to entering the region.¹⁰⁹

References

Amri, A., 'Combating Maritime Piracy in Southeast Asia from International and Regional Legal Perspectives: Challenges and Prospects' (2013) (paper, Southeast Asia Rising! Proceedings of the 5th International Conference on Southeast Asia, Kuala Lumpur, Indonesia, 11-13 December 2013).

Al Sid, Muhammad Ata, *Islamic Criminal Law: The Hudud* (Al Basheer Publications 1996).

Corruption Perception Index (2021).

Fu, Xiaowen, Ng, Adolf K.Y and Lau, Yui Yip, 'The Impacts of Maritime Piracy on Global Economic Development: The Case of Somalia' (2010) 37 *Maritime Policy & Management* 677-697.

Hashim Kamali, Muhammad, 'Terrorism, Banditry and Hirabah: Advancing Shariah New Perspectives' (2017) 8 *Islamic Civilisational Renewal* 11-34.

Hameedullah Mohd Asri and Khalil Ruslan, Muhd, 'The Crime of Hirabah: Approach, Justification & Significance' (2020) 28 *Jurnal Syariah* 383-416.

Liss, Carolin, 'Assessing Contemporary Maritime Piracy in Southeast Asia: Trends, Hotspots and Responses' (2014) *Peace Research Institute Frankfurt (PRIF)* https://www.hsfrk.de/fileadmin/HSFK/hsfk_downloads/prif12_5.pdf accessed 24 April 2024.

Morabito, Giacomo and Sergi, Bruno S., 'Journal of East Asia Studies' (2018) 18 *Journal of East Asia Studies* 255-265.

¹⁰⁴ Xiaowen Fu, Adolf KY Ng and Yui Yip Lau, 'The Impacts of Maritime Piracy on Global Economic Development: The Case of Somalia' (2010) 37(7) *Maritime Policy & Management* 677.

¹⁰⁵ Giacomo Morabito and Bruno S Sergi, [Title not clearly given], (2018) 18 *Journal of East Asia Studies* 258.

¹⁰⁶ Thư Nguyễn Hoàng Anh, 'Stemming the Tide of Piracy in Southeast Asia' (9 June 2022) *The Interpreter*

<https://www.lowyinstitute.org/the-interpreter/stemming-tide-piracy-southeast-asia> accessed [date].

¹⁰⁷ Stach (n 24) 727.

¹⁰⁸ Amri (n 21).

¹⁰⁹ 'Piracy and Armed Robbery at Sea' (Gard, March 2022)

<https://www.gard.no/web/content/piracy-and-armed-robbery-at-sea> accessed [date].

Noor, Azman Mohd, 'Punishment for Rape in Islamic Law' (2009) 5 MLJ CXIV 1-9.

Okon, Etim E., 'Hudud Punishments in Islamic Criminal Law' (2014) 14 European Scientific Journal 227.

Piracy and Armed Robbery at Sea (Home, March 2022) <https://www.gard.no/web/content/piracy-and-armed-robbery-at-sea> accessed 24 April 2024.

Piracy & Armed Robbery Against Ships Annual Report (ICC International Maritime Bureau 2021).

Rahim Wajis, Nik, 'The Crime of Hiraba in Islamic Law' (1996) Unpublished PhD Thesis, Glasgow Caledonian University.

Shah, Hendun Abd Rahman and Osman, Suraiya, 'The Universality of Hadd Punishment with Special Reference to Piracy and Hirabah' (2017) 3 Malaysian Journal of Syariah and Law 14-15 <https://doi.org/10.33102/mjssl.v3i1.3> accessed 24 April 2024.

Sherman A Jackson, 'Domestic Terrorism in the Islamic Legal Tradition' (2001) 91 The Muslim World 293-310.

Stach, Lukasz, 'Neverending Story? Problem of Maritime Piracy in Southeast Asia' (2017) 7 International Journal of Social Science and Humanity 677-697 <https://doi.org/10.18178/ijssh.2017.7.12.915> accessed 24 April 2024.

Thư Nguyễn Hoàng Anh, 'Stemming the Tide of Piracy in Southeast Asia' (The Interpreter, 9 June 2022) <https://www.lowyinstitute.org/the-interpreter/stemming-tide-piracy-southeast-asia> accessed 24 April 2024.

Vogel, Frank E., 'The Trial of Terrorist under Classical Islamic Law' (2002) 43 Harvard International Law Journal 53-65.

Zubir, Nurulizwan, 'Maritime Violence: Implications to Malaysia' (2012) 5 Arena Hukum 48-53 <https://doi.org/10.21776/ub.arenahukum.2012.00501> accessed 24 April 2024.