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## Copyright (Hak Ibtikar) in Islamic Law and Legal Views

Lailatun Nikmah, Zuhrotul Janah, Darin Arif Mu'allifin

UIN Sayyid Ali Rahmatullah Tulungagung

[Lailatunnikmah1509@gmail.com](mailto:Lailatunnikmah1509@gmail.com)

[zuhrotuljannahws@gmail.com](mailto:zuhrotuljannahws@gmail.com)

[mandarinarif@gmail.com](mailto:mandarinarif@gmail.com)

### ABSTRACT :

Intellectual Property Rights (IPRs) are economic rights granted by law to a creator or inventor over a work resulting from human intellectual abilities. Intellectual Property Rights are exclusive rights granted through a regulation or law to a person or human organization for their creations. One example of Intellectual Property Rights is Copyright (Haq Ibtikar). Copyright is one of the rights that has received legal protection in Indonesia as a result of high level creativity in the form of works that are utilized both by the person concerned and by many people. The aim is to understand copyright in Islamic law. The results of this research show that, in Islamic law, copyright is known as haq al-ibtikar, namely the right to a creation that was first created. Islam only recognizes and protects creative works that are in harmony with the norms and values contained therein.

**Key words:** *Keywords: Intellectual Property Rights, Exclusive Rights, Copyright (Hak Ibtikar)*

## INTRODUCTION

Intellectual Property Rights or IPR which in English is called Copyright. This concept appeared for the first time after the industrial revolution in Europe. Especially in the field of copyright, it developed especially after the discovery of the printing press by Johannes Guttenberg. Since then it has been easy to print books in unlimited quantities, thus indirectly encouraging copyright infringement. Protection of various copyrighted works has actually been carried out for a long time. In 1886 a convention was held called the Berne Convention for the Protection of Literary and Artistic. This convention provides protection for works of art and literature, which was later revised in 1928 in Rome. Apart from that, in 1952 the Universal Copyright Convention was also established which protects ownership rights over creations. Innovations when created by humans are valuable assets, especially if their thoughts and thoughts are expressed directly in a medium.

Copyright is intellectual property for a product or service which is the exclusive right of the owner of the product. The main function of copyright is none other than to respect and protect the rights of works created from the human mind. There are three main rights that will be obtained by the copyright owner, namely exclusive rights, moral rights and economic rights. With exclusive rights, anyone is prohibited from using, reproducing, copying or selling copyrighted works without the permission of the creator or owner. Meanwhile, morally, even though a work has been

purchased, it must still include the original creator or owner of the work. From an economic perspective, the creator or owner of a work has the right to receive compensation or profits from those who use the work.

In Islamic Law, Copyright is known as *Ibtikar Rights*, namely the right to a creation that was first created. Islam only recognizes and protects creative works that are in harmony with the norms and values contained therein. If the copyrighted work is contrary to Islamic values, then it is not recognized as a copyrighted work and there is no form of protection for that type of work. Protection of copyright in Islam has conditions that must be met in order for a creative work to be recognized as ownership rights to property. First, it does not contain haram elements in it. Second, it does not cause damage to society. Third, it does not conflict with Islamic law in general.

### **Methods**

The research library research method, or library study, is a data collection technique carried out by reading books, magazines, literature, notes and reports related to the problem you want to solve. The literature study method is a series of activities related to methods of collecting library data, reading and taking notes, and processing research materials

### **Result**

#### **1. Understanding Copyright**

Copyright is a branch of IPR that protects human creations in the fields of art, literature and science. Based on Law Number 19 of 2002 concerning Copyright, Copyright is the exclusive right for the creator or recipient of the right to publish or reproduce his work or give permission to do so without prejudice to restrictions according to applicable laws and regulations. Meanwhile, according to Law no. 28 of 2014 concerning Copyright, copyright is the exclusive right of the creator which arises automatically based on declarative principles after a work is realized in real form without reducing restrictions in accordance with statutory provisions.

The main function of copyright is none other than to respect and protect a work's rights. There are three main rights that will be obtained by the copyright owner, namely exclusive rights, moral rights and economic rights. With exclusive rights, anyone is prohibited from using, reproducing, copying or selling copyrighted works without the permission of the creator or owner. Meanwhile, morally, even though a work has been purchased, it must still include the original creator or owner of the work. From an economic perspective, the creator or owner of a work has the right to receive compensation or profits from those who use the work.

Terms Used in Copyright in the rules governing copyright, there are several terms you need to know, among which are the following:

##### **a. Creation**

The definition of creation is the result of work created by its creator in original form and in various fields, both in the exciting fields of literature, science and other fields. It is this work and its owner that must receive legal protection.

##### **b. Creator**

Creators are people, either individually or in groups, who create or produce a work of creation. The results of the work are made based on imagination, mental ability, skill, dexterity and expertise which are expressed in the form of work.

##### **c. Copyright Holder**

The copyright holder is also known as the copyright owner, namely the party who has the right to receive the rights to a work he created.

d. Copyright

Copyright or what is usually abbreviated as IPR is a special right granted by the recipient of the right to create, reproduce, publish and grant permission for a work. The rights granted must be in accordance with applicable laws and regulations.

e. Licence

A license is a permit given to another party who wants to use or reproduce the copyright holder's work by fulfilling certain requirements.

## 2. The Islamic view on Copyright in the Quran

The Qur'an is a Muslim life guide that governs all aspects of life, no exception in relation to copyright. There are two verses that explain the Islamic view on Copyright, namely Qur'an Surat Al-Baqarah verse 188 which reads:

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ يَا بَاطِلٍ وَتُدْأُوا بِهَا إِلَىٰ حُكْمٍ تَأْكُلُوا فَرِيقًا مِّنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ  
[188]: بقرة

It means:

"And do not part of you eat the property of another part of you in a vain way and (don't) you take (the matter of) the property to the judge, so that you can eat part of the other person's property by (the way of committing) sin, even though you know."

And in the Al-Qur'an, chapter Al-Maidah verse 38 which reads:

38: مائدة] كَيْمٌ عَزِيزٌ وَاللَّهُ ۖ ۗ اللَّهُ مِّنْ نَّكَالًا كَسَبَا بِمَا جَزَاءُ أُيْدِيهِمَا فَاقَطَعُوا ۗ وَالسَّاقَةَ وَالسَّاقِ

Meaning:

"The man who steals and the woman who steals, cut off their hands (as) retribution for what they did and as a punishment from God. And God is Mighty and Wise."

These two verses do not clearly explain copyright. However, there are implied words and sentences in it which confirm that Allah has forbidden anyone to use other people's property without permission.

Using other people's brands and works is a copyright violation. Moreover, if you do not get permission from the copyright holder directly, this is considered a form of theft which is prohibited by Islam. Stealing by using someone else's work is an action that is detrimental to the copyright owner of that work, for example piracy of books, cassettes, software, where the original creator does not gain any profit from the trade in pirated goods.<sup>1</sup>

Allah's Word in the Qur'an, Surah As-Syuara, verse 183 clearly explains the prohibition on reducing other human rights as written:

مُفْسِدِينَ إِلَّا ض فِي تَعْتُوا وَلَا أَشْيَاءَهُمْ نَّاس تَبَخَسُوا وَلَا

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<sup>1</sup> QS Al-Ma'idah (5): 38

It means

"And do not harm humans in their rights and do not run rampant on the earth by causing mischief."<sup>2</sup>

## 2. Scholars' Views on Copyright

Scholars from across schools of thought took part in formulating laws and views on copyright. The following are the views of scholars regarding copyright that you need to know, including:

a) Copyright is a valuable asset

Original copyrights are classified as valuable assets. So Wahbah al-Zuhaili firmly stated that piracy is a crime or violation of copyright which must be prosecuted by law. The perpetrator means committing an act of sin and disobedience.

This act is tantamount to the practice of theft and compensation must be imposed for this violation. In determining the fiqh rules regarding copyright, there are at least three guidelines that must be taken.

The first guideline relates to losses or dangers that must be eliminated. If an action definitely causes harm to the copyright owner, then of course it is considered haram. Meanwhile, the second guideline is to prioritize benefits and avoid mafsadat. Meanwhile, the final guideline is that everything that is born from a haram day is haram. So if the piracy does not freely sell and sell its work, then the profits obtained are also considered haram.

b) Copyright is included in the scope of wealth or Hukuq Maliyyah

In this case, copyright is a property right that must be legally protected (mashun) like other property, whether created or created gets legal legal protection because it does not conflict with Islamic law.

This is because copyright is intellectual property that is born from the results of human thought which is then processed to become useful goods. So copyright also includes intellectual creativity which provides private rights for the owner and creator.

c) Copyright can be the object of the contract

Copyright can be Al-Ma'qud Alaih or the object of a contract in the world of commerce. The contract consists of a tabarru'at (non-commercial) contract and will be mu'awwadah or (commercial exchange). Copyright can also be an object or property that can be inherited or donated to another person.

## 2. Copyright according to Fatwa DSN MUI

The fatwa regarding copyright has been strictly regulated by the MUI based on Fatwa No. 1 of 2003 and Fatwa no. 1/MUNAS/VII/MUI/15/2005. Copyright is given to the recipient of the right to reproduce his work or link his work and provide it to other parties to do this. All Copyright regulations are also regulated in Law number 19 of 2002.<sup>3</sup>

Fatwa on Copyright

a. According to scholars' opinions about inventions, copyrights, rights and benefits, among others:

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<sup>2</sup> Ibid h. 28

<sup>3</sup> Fatwa DSN MUI No. 1 Tahun 2003

"The majority of scholars from the Maliki, Syafi'i and Hanbali schools of thought believe that copyright on original creations and benefits are classified as valuable property as things if they can be used according to syar'a (Islamic law)" (Dr. Fathi al-Duraini, Haqq al- Ibtikar fi al-Fiqh al-Islami al-Muqaran, [Bairut: al-Fiqh al-Islami al-Muqaran, [Bairut: Mu'assasah al-Risalah, 1984], p.20).

Regarding the right of authorship (haqq al-ta'lif), one of the copyrights, Wahbah al-Zuhaili asserted: "Based on the fact (that authorship is a right protected by syar' [Islamic law] based on the principle of istishlah), printing repeating or copying the book (without valid permission) is considered a violation or crime against the author's rights; in the sense that the act is an act of disobedience that causes sin in the eyes of Sharia' and is theft that requires compensation for the author's rights over manuscripts printed in violation and tyranny.

#### b. Legal Provisions

- 1) In Islamic law, Copyright is seen as one of the huquq maliyyah (property rights) which is protected by law (mashun) as mal (wealth).
- 2) Copyrights that are protected by Islamic law as referred to in number 1 are copyrights on creations that do not conflict with Islamic law.
- 3) Just like property, Copyright can be made the object of a contract (al-ma'qud 'alaih), both a mu'awadhah contract (exchange, commercial), and a tabarru'at contract (non-commercial), as well as bequeathed and inherited.
- 4) Every form of violation of copyright, especially piracy, is a tyranny that is illegal.

#### c. Noticing

- a) Explanation from ASIRI in the Fatwa Commission meeting on 21 August 2002 and 21 September 2002/ 14 Rajab 1423.
- b) MUI Fatwa Commission Meeting on Saturday, November 23, 2002 A.D. /; Saturday, 7 Zulqaidah 1423 H./11 January 2003 AD; and Saturday, 14 Zulqaidah 1423 H./18 January 2003 AD.
- c) Various legal regulations about copyright, and finally Law of the Republic of Indonesia number 19 of 2002 about Copyright.

### 3. Ulama and MUI views n copyright violations

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**4. Punishment for copyright infringement in Islamic view** Setiap tindakan yang melanggar

The law must of course be enforced firmly, not least from an Islamic perspective. Because copyright infringement is an unjust act that disturbs society and anyone who violates it must receive appropriate punishment. Violating copyright is included in the category of theft. In Islamic religious rules and in countries that apply Islamic law, loyal thieves will be punished by cutting off their hands. However, this does not apply in Indonesia because this country has its own laws.

The fatwa regarding copyright has been strictly regulated by the MUI based on Fatwa No. 1 of 2003 and Fatwa no. 1/MUNAS/VII/MUI/15/2005. The law of violating copyright is strictly punished as something that is haram, including derivative actions, for example piracy of books or cassettes, so when the book or cassette is bought and sold, the law of buying and selling the goods falls into the haram category. Buyers also have to be careful because if they know the goods are pirated but still buy them, then it is haram.

Allah has expressly revealed His Word in Q.S. An-Nisa' verse 29 regarding the prohibition on consuming other people's property in vain, the father reads:

﴿ اِنَّفُسَكُمْ تَقْتُلُوْنَ وَلَا اِنَّكُمْ تَرٰضُوْنَ عَنْ تَبٰجِهٖ تَكُوْنُوْنَ ۗ اِلَّا بِاَبْطٰلٍ بَيْنَكُمْ اَمْوَالِكُمْ تَاْكُلُوْنَ لَا اَمْنٌ لِّلَّذِيْنَ اٰتٰهَا يٰۤاَنسَآءُ ۗ يٰمَآ بُرِّكُمۡ كَلَّ اللّٰهُ ۗ ﴾

It means:

"O you who believe, do not devour each other's wealth in a false way, except by means of business that is carried out mutually between you. And do not kill yourself, indeed Allah is Most Merciful to you."

That is why it is very important to register exclusive rights to a work in order to receive legal protection from both the state and religion. The aim is that no party takes advantage without the rights to the work that has been created by someone else. This also

applies to sellers to be selective in choosing and selling their merchandise. Don't let the goods you buy and sell are haram products because they are pirated. If investigated, the seller could also be subject to punishment if he is found to have done this intentionally.

In terms of buyers, they should also be selective in choosing the products they want to buy. If you can't afford the original version, don't force yourself to buy a pirated product. There are other products that have the same function and can be purchased at affordable prices. Islam is so beautiful that immediately things in life in the world are regulated clearly in the Koran. By knowing copyright in the Islamic view, it is clear that from a religious perspective the act of violating copyright is an act that is haram to do..<sup>4</sup>

#### **4. Copyright according to Copyright Law**

Copyright in Indonesia is regulated in UU No. 19 of 2002 concerning Copyright and has been updated through Law no. 28 of 2014. The law through article 1 point 1 provides the understanding that copyright is an exclusive right for the creator or copyright holder to publish or reproduce his work, which arises automatically after a work is created without reducing restrictions according to applicable laws and regulations.

What is meant by the expression or embodiment of an idea in a creative work is that a work cannot be given exclusive rights if it is only an idea, but must be in a real or tangible form (in foreign literature it is often called fixation).

The following will give an example of the difference between an idea and the embodiment of an idea (fixation):

- a. If someone has the idea of writing a story of personal experience in the form of a novel, then the story of the experience will not receive protection if it is not realized in written form (such as a novel or other work that can be seen, read or heard).
- b. If a singer has the idea of telling the atmosphere of Yogyakarta in the form of a song, the atmosphere of Yogyakarta is something normal, but if the singer expresses it in the form of a song and can be heard, it will become a work that can be protected by copyright. Apart from expression, a work must also be in a distinctive form and be original, not imitate someone else's work or a public domain work, as regulated in article 1 number 2 and number 3 of the Law No. 19 of 2002 Article 1 Law no. 28 of 2014 (UUHC) concerning copyright also explains that a creation is any creative work in the fields of science, art and literature which is produced based on inspiration, ability, thought, imagination, dexterity, skill or expertise expressed in concrete form. To make it easier to understand the terms of copyright protection, based on the copyright law they are as follows:
  - a. Creative works in the fields of science, art and literature.
  - b. Tangible or real form.
  - c. It is genuine (original).
  - d. Is unique and personal.

Apart from that, the requirement of authenticity or originality, which means that the creation has a distinctive form and shows authenticity based on the personal abilities and creativity of the creator because the creation is the highest ego (alter ego) of the creator

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<sup>4</sup> UU No. 19 Tahun 2002

(Damian, 2003: 132) Copyright in There are two types of meaning of granting exclusive rights regulated in the UUHC, namely:

- a. Copyright (article 1 numbers 2 and 4) covers the creator and copyright holder.
- b. Related rights or neighbor rights (article 1 point 5) include:
  - a) The performer is a person or several people who individually or together perform and display a work (number 6).
  - b) Phonogram producer is the person or legal entity who first recorded and has responsibility for carrying out sound recording or sound recording, both recording performances and recording voices or other sounds (number 7).
  - c) broadcasting institutions are broadcasting operators, whether public broadcasting institutions, private broadcasting institutions, community broadcasting institutions or subscription broadcasting institutions which in carrying out their duties, functions and responsibilities are in accordance with the provisions of statutory regulations (number 8) Article 20 UUHC also explains that the Rights related include:
    1. Moral rights belong to the Performer.
    2. Economic rights owned by Performers.
    3. Economic rights of Phonogram Producers.
    4. Economic rights of Broadcasting Institutions.

## 5. Creator According to Copyright Law

To explain who is considered a creator in copyright law, the following article regulates:

creator. Article 1 number 2 UUHC A creator is a person or several people who individually or together produce a creation that is unique and personal. Article 31 explains that what is called a creator is:

- a. People mentioned in creation;
- b. The person who is declared the Creator of a creation;
- c. The person mentioned in the creation registration letter;
- d. Listed in the general register of creations as the creator.

Based on the UUHC there are two types of creators or legal subjects who can be given copyright protection, namely:

### 1. Individual

If a work is created by several people (joint works), according to Article 34 UUHC, the person who designs the work is recognized as the creator if the work is designed by someone and realized and carried out by another person under the direction and supervision of the person who designed it. According to WIPO, the results of creation through joint works are recognized by all parties (joint owners of the entire work) who contributed their work (Utomo, 2010: 1978).

### 2. Legal Entity

It is possible for a business entity to own a copyrighted work. Legal entities in this case can be in the form of private legal entities and public legal entities. Ownership of copyright by a private legal entity can be demonstrated through Article 37 of the UUHC which also explains that if a legal entity makes announcements, distribution or communication of works originating from that



legal entity, without naming someone as the creator, the legal entity is considered to be the creator. Meanwhile, ownership of copyright by a public legal entity can be demonstrated through article 35 (1) which explains that the copyright holder for a work created by the creator in an official relationship, is considered to be the creator, namely a government agency. If a copyrighted work is not known to the creator, then the owner Copyright belongs to the state, as explained in article 38 which explains that copyright for traditional cultural expressions is held by the state and the state is obliged to inventory, safeguard and maintain traditional cultural expressions. What is meant by "traditional cultural expression" includes one or a combination of the following forms of expression (explanation of article 38 paragraph 1):<sup>5</sup>

- a. Verbal textual, both spoken and written, in the form of prose or poetry, in various themes and message content, which can be in the form of literary works or informative narratives.
- b. Music, including, among other things, vocal, instrumental, or a combination thereof.
- c. Movement, including, among other things, dance.
- d. Theatre, including, among other things, puppet shows and folk plays.
- e. Fine art, both in two-dimensional and three-dimensional form, made from various materials such as leather, wood, bamboo, metal, stone, ceramics, paper, textiles, etc. or a combination thereof.
- f. traditional ceremonies.

## **6. Rights of the Creator**

The rights owned by creators and copyright holders are divided into two, namely moral rights and economic rights. The following will explain what is meant by the rights owned by creators according to the UUHC.

### **1. Moral Rights (Moral Rights)**

Moral Rights are rights inherent in the creator, namely the right to always include the creator's name in every creation and the right to the integrity of the creation, which cannot be removed or removed without any reason, even though the copyright or related rights have been transferred. Moral rights are regulated in article 5 (1) UUHC (inclusion of names and rights to changes in the results of works). Historically, moral rights originate from the *droit d'auteur* (French) tradition which sees intellectual creation as an embodiment of the spirit or soul of the creator. Meanwhile, Anglo-Saxon countries consider copyright and related rights as pure and simple property rights that can be bought, sold, rented. This difference in perception is what differentiates legal protection of moral rights in Continental European and Anglo-Saxon countries. European countries generally provide strong protection while Anglo-Saxon countries are not as strict as Continental European countries (WIPO-Copyright, 2005: 16-17; Utomo, 2010: 89). There are two kinds of moral rights, namely:

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<sup>5</sup> Muhammad Akbar, M. *Taufan "Hak Cipta (Copyright) dalam Pandangan Hukum Islam"*. KIIES Volume 1 2022

## **7. Copyright Violation According to UUHC**

There are basically two copyright violations, namely violations of the moral rights and violations of the economic rights of the creator. Violations of moral rights are regulated in article 98 UUHC, and can be carried out by civil lawsuit and compensation through the commercial courts. The institution authorized to resolve civil cases of violations of economic rights is the commercial court. Violations of civil economic rights are regulated in article 96 UUHC. Regarding violations of the economic rights of creators, according to the Indonesian Recording Industry Association (ASIRI) in its Company Profile, there are three types of piracy in sound recording works, namely (Lindsey, et al., 2006: 121):

1. Plagiarism is a violation in the form of plagiarizing a recorded work by duplicating an entire recording album by copying or copying exactly the contents, cover and packaging. This plagiarism is often called asphalt cassette/CD (original but fake).
2. Pirate (piracy), is a violation by multiplying recorded works by compiling various songs from several sound recording albums that are protected by copyright and sell well on the market. This violation is often referred to as album selection/typing.
3. Bootleg, is piracy of sound recordings carried out on a singer (performer) who is performing (live show) on stage and without permission from the singer. In the world of education, copyright infringement practices are also often found. Violations are usually committed by academic actors such as academic staff, lecturers, researchers or students. Violation practices that are often carried out are in the form of violations of moral rights, such as not including quotations (not mentioning the origin of the reference source) in written works or recognizing other people's written works as their own. This practice is usually called plagiarism. Plagiarism according to Minister of National Education Regulation no. 10 of 2011 is obtaining or trying to obtain credit or value for a scientific work by citing part or all of the work and/or scientific work of another party which is recognized as scientific work, without stating the source accurately and adequately. The discovery of many articles containing elements of plagiarism, such as the increasing number of articles created by copying and pasting via the internet to fulfill academic requirements, prompted the government to issue National Education Ministerial Decree No. 10 of 2007 concerning Prevention and Control of Plagiarism in Higher Education. In this case, the government wants to cultivate the habit of upholding honesty and academic ethics, such as prohibiting plagiarism in producing scientific work, so that good academic creativity can be developed.

## **8. Copyright Law Resolution Efforts**

The Copyright Law provides legal resolution options for creators or copyright holders whose rights are violated by other parties. The following is a resolution mechanism for creators who wish to defend their rights:

- a. Civil action

This mechanism is regulated in Article 99 UUHC. The copyright holder has the right to submit a claim for compensation to the commercial court for infringement

of his creative rights and request the confiscation of the objects published or the results of the reproduction of the creation. Copyright holders also have the right to request the commercial court to order the handover of all or part of the income obtained from holding lectures, scientific meetings, performances or exhibitions of works, which are the result of copyright infringement. Before handing down a final decision and to prevent greater losses to the party whose rights have been violated, IPR can order the infringer to stop publishing activities and/or propagating works or goods which are the result of copyright infringement.

b. Criminal Charges.

Criminal provisions for copyright infringement are regulated in articles 112-118 UUHC. Civil lawsuits can still be filed along with criminal charges. Civil proceedings do not invalidate the state's right to carry out criminal prosecution. Before criminal efforts are carried out, the new UUHC requires that mediation efforts be carried out first before criminal charges are carried out (article 95 paragraph 4 UUHC).

c. Dispute resolution through alternative dispute resolution/ADR (Alternative Dispute Resolution) in the form of negotiation, mediation, conciliation, and other methods chosen by the parties in accordance with applicable law (Article 95 UUHC).

## **Conclusion**

Copyright exists to respect and protect a work's rights. Which has been created by the owner of the original work. With exclusive rights for the owner of the work, anyone is prohibited from using, reproducing, copying or selling copyrighted works without the permission of the creator or owner. Meanwhile, morally, even though a work has been purchased, it must still include the original creator or owner of the work.

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