

Copyright Infringement Crime in Islamic Criminal Law

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Abstract

*This research tells about the Crime of Copyright Infringement in Islamic Criminal Law. Copyright in contemporary Islamic scholarship is known as *haq Al-ibtikar*. From the word there are two sets of words namely *had* and *al-ibtikar*. The definition of *had* is a specialty owned by a person or group of people over something. While in etymology *al-ibtikar* comes from Arabic in the form of *isim mashdar*, *al-ibtikar* itself means to create. Islam recognizes intellectual property rights and protects them from the hands of destroyers and robbers. Whoever robs it is obliged to pay compensation. Intellectual property rights in Islam are classified as property. Therefore, stealing someone's intellectual property rights applies to the law of theft. Islam forbids theft in its various types and is obliged to return the stolen goods. Not only that, Islam also imposes *hadd* punishment for perpetrators of *sariqah* (theft) and *ta'zir* punishment for perpetrators of *ghashb* (mugging). This is one of the clear proofs that Islam is very protective and safeguards one's property.*

Keywords: Copyright, Crime, Islamic Criminal Law

Abstrak

Penelitian ini bercerita tentang Tindak Pidana Pelanggaran Hak Cipta dalam Hukum Pidana Islam. Hak cipta dalam khazanah Islam kontemporer dikenal dengan istilah *haq Al-ibtikar*. Dari ikatan tersebut terdapat dua rangkaian kata yaitu *had* dan *al-ibtikar*. Pengertian *had* adalah kekhususan yang dimiliki oleh seseorang atau sekelompok orang atas sesuatu. Sedangkan secara ietimologi *al-ibtikar* berasal dari bahasa iarab dalam bentuk *isim mashdar*, *al-ibtikar* sendiri artinya menciptakan. Islam mengenal hak milik intelektual serta melindunginya dari tangan-tangan perusak dan perampok. Bagi barang siapa yang merampok maka wajib baginya membayar ganti rugi. Hak milik intelektual di dalam Islam tergolong ke

dalam kategori harta. Maka dari itu mencuri HAKI seseorang maka berlaku padanya hukum pencurian. Islam mengharamkan pencurian dengan berbagai jenisnya serta wajib mengembalikan barang yang telah dicuri. Tidak hanya sampai di situ, Islam juga memberlakukan hukuman had bagi pelaku sariqah (pencurian) dan hukuman ta'zir bagi pelaku ghasb (penjambretan). Ini merupakan salah satu bukti nyata bahwa Islam teramat melindungi dan menjaga harta seseorang.

Kata kunci: Hak Cipta, Kejahatan, Hukum Pidana Islam

Introduction

Lifestyle, economy, and popularity encourage a person to act that sometimes even harm others. One of them is from actions that fulfill elements of infringement in the field of copyright that ignore the exclusive rights of creators and owners of related rights. This will have a negative impact on the motivation of creators and owners of related rights to work. Every work produced uniquely by a person or several people has become intellectual property rights for him. The work of intellectual property in the field of copyright will get legal protection if realized or expressed in real terms not just an idea. Legal protection of copyright system automatic protection (automatic protection) as based on the Berne convention¹. In article 1 number 1 of the copyright law that:

"Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realized in a tangible form without reducing the restrictions in accordance with the provisions of the legislation."

In violation of copyright has a legal basis derived from Al-Qura'an surah An-Nissa verse 29 which means:

"O you who believe, do not eat each other's property by unlawful means, except by way of trade that is Valid with mutual consent among you. and do not kill yourselves .Sesungguhnya Allah is Most Merciful to you."

Based on the explanation above, the author is interested in doing this research because the case of copyright infringement crime is still happening among the public. As well as being an interesting point of view of Islamic criminal law on copyright infringement which will then be found both the meeting point of the problem. The author hopes to contribute to the development and progress of Islamic criminal law.

Overview of Criminal Offenses

The term criminal offense is known in Dutch criminal law as criminal offense. This term is found in the Dutch Criminal Code and based on the principle of concordation, this term applies to the Dutch East Indies Criminal Code (KUHP).

¹ Ni Ketut Supasti Dharmawan, *Harmonization of Indonesian Intellectual Property Law*, (Denpasar: et.al, 2018), p. 25.

However, there is no official explanation of what is meant by *starafbaarfeit*. Therefore, legal experts have attempted to provide the meaning and term, but until now there has been no uniformity of opinion on what is meant by criminal offense. There are several terms that have been used either in legislation or in legal literature as a translation of the term criminal offense:

First, Criminal offense can be said to be an official term in Indonesian criminal legislation. And almost all laws and regulations use the term criminal offense. *Wirjono Prodjodikoro* is one of the legal experts who use this term. *Second*, And there are some legal experts who use criminal events such as *Mr. R. Tresna* in his book entitled *Principles of Criminal Law*, *A. Zainal Abidin* in his book entitled *Criminal Law* The legislators have also used the term criminal event, namely in the *Temporary Constitution (UUDS)* in 1950 in article 14 paragraph (1).

Third, *Delik* comes from the Latin *delictum* which is used to describe what is meant by criminal offense. *Fourth*, In *Mr. M. H. Tirtaamidjaja's* book entitled *Principles of Criminal Law*, we can find criminal offenses. And *Fifth*, according to *Mr. Karni and Schzrvendijk* in the book they wrote a lawful act according to the term from the title of the book they made is "*Summary About Criminal Law*" and "*Lessons About Indonesian Criminal Law*".

According to *Sudarto*, in the formation of the law, it is now correct to use the term criminal offense as a substitute for criminal offense, this is shown in several regulations in legislation such as: *Emergency Law No. 7 of 1995 concerning the Investigation, Prosecution, Trial of Economic Crimes, Presidential Stipulation No. 4 of 1964 concerning the Obligation of Community Service* in the framework of socialization for convicts for committing crimes. *S.R Sianturi* uses offense as a criminal offense. *Sianturi* gave a formulation such as: Criminal offense is an action at a certain place, time and condition that is prohibited (required) and threatened with punishment by law that is against the law, as well as an error committed by someone (who is responsible).

According to *Moeljatno*, criminal acts are acts prohibited by a rule of law which prohibitions are accompanied by threats (sanctions) in the form of punishment. And *Moeljatno* also argues that criminal acts are acts prohibited by the rule of law and threatened with punishment, in the criminal it is made that the prohibition is shown to the act of a situation or event caused by the negligence of the person, while the criminal act is shown to the person who caused the incident. Criminal offense according to *Van Hammel* is the behavior of the person formulated in the Act, which is against the law that should be punished and done with fault. So the characteristics that exist in every criminal act are unlawful nature (mutuality, illegality).

Definition of Criminal Offense

A criminal offense (*delik*) is an act that violates the provisions of material criminal law in the law governing criminal law, an act which is contrary to the law which is carried out intentionally by a person who can be held responsible for the actions he has committed.² And according to *Vos*, a criminal offense is a human behavior that is punished by criminal legislation.³ *Simons* is one of the jurists who

² *Teguh Presetyo, Criminal Law*, (Depok: PT. FH UII Press. 2004), p. 49. 49.

³ *Andi Hamzah, Principles of Criminal Law*, (Jakarta: Rineka Cipta 2004), pp. 97.

formulated the most complete criminal offense, according to Simons, a criminal offense is a human action that is contrary to the law, threatened with punishment by the law, which is carried out by people who can be held accountable and can be blamed on the perpetrator.

Criminal offenses in general tend to look at actions (which result) that are prohibited by law. Whereas in special criminal offenses, it is more about legality issues or those regulated in the law. In special criminal offenses, there is more reference to legal norms or legal norms, while those regulated in the legislation are not included in the discussion. This special criminal offense is regulated outside the general criminal law. While a criminal offense is known among the public as a crime, of course this designation looks simple without having to know what actions are prohibited in the law.

As long as the act can harm others, then it is a crime. And whereas in criminal law to be able to give someone a punishment, there must be a perpetrator who does something that violates the rules of law that have been made.⁴ The conditions of a criminal offense are: a. There must be a human action, b. The human action is contrary to the law, c. Actions that are prohibited by law and can be punished. And d. The human action is contrary to the law The act must be accountable to the perpetrator.

Elements of Criminal Offense

After knowing the term criminal offense, the definition of criminal offense, there are several elements in the Criminal Code in general, it can be known that there are two types of criminal offense elements, namely: *First*, objective element. Subjective elements are elements that exist outside the perpetrator. Elements that have to do with the circumstances, in which the perpetrator's actions are only made of: Unlawful nature, The quality of the perpetrator, Validity.

Second, subjective Elements. Elements contained or attached to the perpetrator, which are connected to the perpetrator and include everything contained in his heart. Consists of several elements: Intentional or unintentional (dolus or culpa), an attempt as described in article 53 paragraph (1) of the Criminal Code, planning an act in advance which has been listed in 340 Criminal Code. various crimes such as theft, fraud, extortion.

According to Pompe, before the occurrence of a criminal offense, there are several elements that must be fulfilled, namely: The existence of human action, fulfill the formulation in the formal requirements, against the law. Meanwhile, according to Jonkers, the elements of a criminal offense that must be committed are: Actions against the rule of law, unlawful acts related to criminal offenses, and the wrongdoing committed by the perpetrator can be accounted for.⁵ *Third*, criminal offenses in Islamic Criminal Law. Criminal acts in Islamic criminal law are called *jarimah* and *jinayah*. Criminal acts are criminal acts committed by *mukallaf* people (people who can be burdened with obligations).

⁴ Nadang Alamsah D and Sigit Suseno, *Module I Definition and Scope of Special Crimes*, (April 2020), p. 7. 7.

⁵ Adami Chazawi, *Criminal Law Part I*, (Jakarta: PT Raja Grafindo 2010), p. 81. 81.

Jarimah

Jarimah are shara prohibitions that are threatened by Allah with had and ta'zir punishments. Dah the jurists define al-jinayat as the plural form of jinayah, which linguistically means a crime against the body, property and honor⁶. These prohibitions are sometimes in the form of doing actions that are prohibited or leaving actions that are ordered. So we can understand that something can be said to be jarimah if it is prohibited by sharia. Then this is no different from the definition of a criminal offense, criminal event or offense in positive criminal law. Al-Mawardi defines jarimah as "all the prohibitions of shara' (doing things that are prohibited and or leaving things that are required) which are punishable by had and ta'zir.

Jinayah

The fuqaha often use the word jinayah for jarimah where all the notions of jinayah are a person's actions and are usually limited to prohibited acts only. Among the fuqaha what is meant by the words jinayah is an act prohibited by shara', whether the act affects life or property. However, most fuqaha use the words jinayah only for actions that affect the soul and limbs of others, such as killing, injuring, beating, aborting and others. There are some groups of fuqah who limit the use of the words jarimah to jarimahhudud and qisas only.⁷ Etymologically, jinayah is the name for something that is done by someone regarding a crime or what he did⁸. While in terminology, jinayah is a name for those who do what is forbidden by Islamic law, both with regard to life and property.

The Crime of Theft in Islam

Definition of Theft

According to the language of theft is taking other people's rights secretly with a tactic. Meanwhile, according to the term or shara' theft is a person consciously or an adult consciously taking someone else's goods in a certain amount secretly from a place of storage that is well known (usual) in a way that is not justified in law and not because of shubhat. It is done secretly without the knowledge of the owner with the intention of unlawful possession and the act violates the rules of the Law and can be subject to criminal penalties. As with positive law, in Islamic criminal law theft is also known as jarimah *sariqah*. Thus the Islamic criminal law jarimah sariqah has several definitions as follows: (a). Theft according to language is taking other people's goods without the knowledge of the owner. (b). Theft according to the term is someone who takes someone else's property secretly from the place of storage in a way that is not justified by law and not because of *subhat*.⁹

According to Mahmud Shaltut, theft is taking other people's property in secret by someone who is not trusted to keep the goods. According to him, this definition explains the difference between theft and embezzlement. Embezzlement

⁶ Al-Fauzan, *Summary of Complete Jurisprudence*, Volumes I & 2, (Bekasi: PT Darul Falah, 2005), p. 15. 15.

⁷ Ahmad Hanafi, *Principles of Islamic Criminal Law*, (Jakarta: PT Bulan Bintang, 1990), p. 2. 2.

⁸ Abdul Qadir, al-Tasyri al-Jina'i al-Islami. Muqaranan bil qoununil wad'iy, Translator of Tsalisah Team, *Encyclopedia of Islamic Criminal Law*, Volume III, (Bogor: Karisma Ilmu 2007), p. 175. 175.

⁹ Ali as-Shabuni, *Tafsir Ayat Ahkam as-Shabuni Volume I Translation Muammal Hamidi and ImranA.Manan*, (Dar al-Ilmiah, 1995), p. 449. 449.

is carried out by someone who is trusted to guard it while theft is carried out by someone who is not trusted to guard it.¹⁰

Petty theft is taking other people's property by hiding, while grand theft is taking other people's property by force (robbery). Grand theft is also called harabah, which is taking someone else's property with the resistance of the owner. And from all the definitions of theft or called jarimahsariqah, all of them almost have the same view of theft and there is no dispute about the definition of theft among *fuqaha*.

Legal Basis for the Crime of Theft

The legal basis for theft in criminal acts or often referred to as jarimah sariqah and has a legal basis that cannot be disturbed and changed because *jarimah sariqah* is a jarimah which is included in *jarimah hudud*. According to the language of theft is taking other people's rights secretly with a tactic. Meanwhile, according to the term or *Shara'* theft is a person consciously or an adult consciously taking someone else's goods in a certain amount secretly from a place of storage that is well known (usual) in a way that is not justified in law and not because of shubhat. It is done secretly without the knowledge of the owner with the intention of unlawful possession and the act violates the rules of the Law and can be subject to criminal penalties. As with positive law, in Islamic criminal law theft is also known as jarimah sariqah.

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Overview of Copyright

1. Definition of Copyright

Copyright is an exclusive right for the creator to publish or reproduce his creation in the fields of science, art and literature such as books, computer programs, lectures, speeches and other similar creations, as well as rights related to copyright. A sound recording and an image of a performer's performance, such as a singer or dancer on stage, are related rights protected by copyright. Because these works are protected by copyright as exclusive rights, they

¹⁰ Marsum, *Jinayat Islamic Criminal Law*, (Yogyakarta: UII Press Yogyakarta, 1991), p. 94. 94.

are rights reserved solely for the creator or others who are allowed to utilize them with the creator's permission. The activity of announcing or reproducing is defined as the activity of translating, adapting, arranging, translating, importing, exporting, showing to the public, broadcasting, recording and communicating the creation to the public through any broadcast.

Copyright has traditionally applied to books, but copyright has now expanded to include protection of literary, dramatic, musical and artistic works, including sound recordings, film and television sound broadcasts and computer programs. Copyright in most copyrighted works is valid for the lifetime of the creator and 70 years after the creator's death. For developing countries, the fact that developed countries control the copyright of most software, video products and music in what is known as global culture has inevitably led to problems in the areas of piracy and parallel imports.¹¹

The definition of property rights in Islamic criminal law according to language is the power and validity of something *Al-miliku aw al-mulku huwa ma yamlikuhul insane min malih*. The word al milku or al-milku means everything that belongs to humans in the form of property. While property rights according to the term is the scholars differ in opinion regarding the limits of the definition of ownership, it is based on their differences in limiting the meaning of property itself and what assets can be owned and which cannot be owned according to Shara.¹²

2. Basic Nature of Copyright

Copyright law aims to protect the creations of creators who may consist of authors, artists, musicians, dramatists, sculptors, computer programmers and others. The rights of these creators must be protected to avoid people who want to reproduce the copyrighted works of others without the permission of the creator. Basically, copyright is a kind of private ownership of a creation that is the embodiment of an idea of the creator in the field of art, literature and science. When you buy a book, you are only buying the right to keep it and lend it to others. The book is your personal property in tangible form, but when you buy the book you are not buying the copyright of the written work.

With this frame of mind about the nature of copyright. No one is allowed to copy or reproduce the book without the permission of the author. Especially to sell the book without the permission of the author. The right to reproduce written works is the exclusive right of the author and or a person to whom the author transfers the right to reproduce by way of granting a license. Creator as the owner of copyright has an intellectual property in intangible form (intangible) which is very personal. A copyright holder is the author himself, has an intellectual property that is personal and gives him as a creator to exploit the economic rights of a creation that is classified in the field of art, literature and science.¹³

3. Copyright Infringement

In general, copyright is violated if the copyright material is used without the permission of the author who has exclusive rights to his creation. The occurrence

¹¹ Eddy Damian, *Intellectual Property Rights*, (Bandung: Publisher of P.T. Alumni, 2006), p. 6.

¹² Ibn Mandzur Afriki, *Lisanul Arab*, Dar-Al-Ma'arif, (Cairo: Volume 13), pp. 183-184

¹³ Ibn Mandzur Afriki, *Lisanul Arab*, pp. 96.

of infringement must have similarities between existing creations. Thus the creator or copyright holder must prove that his work has been copied and pasted others. Copyright is not infringed if similar works are produced independently, in which case each creator will obtain copyright over their work.

Copyright is also infringed if all substantial parts of a copyrighted work are reproduced. The court will determine whether a part that has been copied constitutes a substantial part by examining whether the part used is important, and has a distinguishing element or easily recognizable part. The part does not have to be in large number and form (quantity) to be a substantial part. Substantial is an important part, not a part in quantity (article 1 paragraph 6; elucidation of article 15 (a). so what is used as a measure is a qualitative measure, not quantitative.

There are several ways that are considered violations of copyright, namely:

- a. Giving the authority (in the form of approval or support) to other parties to infringe copyright,
- b. Have a trade / commercial relationship with pirated goods copyrighted creations,
- c. Importing pirated goods of copyright protected works for retail sale or distribution,
- d. Allowing a public performance venue to be used as a place to infringe the performance or viewing of works that infringe copyright.

Such copyright infringements may be subject to criminal sanctions specifically set forth in Law 28 of 2014 on Copyright.

Copyright Infringement Crime in Islamic Criminal Law

Criminal acts in Islamic criminal law (fiqh jinayah) are often referred to as jarimah. The word jarimah is a synonym for the word jinayat. In terms of terms, it is defined as an act prohibited by shara, whether the act harms life, property or others. And jarimah is often defined as crimes that violate shara law whose perpetrators are subject to punishment through a court process. In Islamic law, jarimah is divided into several groups, among others: (a). Jarimah hudud, namely jarimah subject to hadd punishment, where the punishment has been determined the type and amount of punishment and is fixed. (b). Jarimah qishash-diyat, namely jarimah which is clearly punishable by qishash or diyat. (c). Jarimah ta'zir, namely this jarimah where every act and form of punishment is given to the judge's discretion. Therefore this act is threatened with ta'zir punishment.¹⁴

According to Ahmad Wardi Muslich, jarimah are acts prohibited by shara which are threatened by Allah with hadd and ta'zir penalties¹⁵. while according to Ahmad Hanafi jarimah are shara'a prohibitions that are threatened by Allah with had penalties. These prohibitions are doing actions that are prohibited or leaving actions that are ordered. That an act is seen as a jarimah if the act can harm the rules that exist in a society or its beliefs, harm the lives of community members or their property, or harm their good name or feelings or other considerations that must be respected and guarded.¹⁶

¹⁴ Mauhammad Syahrur, *Limitation of Islamic Criminal Law*, (Semarang: Walisogo Press, 2008), p.15-16.

¹⁵ Ahmad Wardi Muslich, *Introduction and Principles of Islamic Criminal Law Fiqh Jinayah*, (Jakarta: Sinar Grafika, 2006), p. 9. 9.

¹⁶ Ahmad Hanafi, *Principles of Islamic Criminal Law*, (Jakarta: Bulan Bintang, 5th Cet., 1993), p. 1.

Every jarimah must fulfill the following general elements: Nash is an act that prohibits and threatens punishment against him. And this usur is also commonly known as the formal element (shari'i pillar), The existence of an act that forms a jarimah, either in the form of actual actions or inaction. This element is usually called the material element (rukun maddi), The perpetrator is a mukallaf, that is, a person who can be held accountable for the jarimah he has committed, and this element is called the moral element (rukun adabi).¹⁷

In Islamic criminal law, the division of jarmah can be distinguished according to differences, among others: Judging from the severity of the punishment, the jarimah is divided into three parts, namely: jarimah hudud, jarimah qishash diyat and ta'zir, Judging from the intention of the perpetrator, which is divided into two parts, namely intentional jarimah and unintentional jarimah, Judging from the way of doing it, which is divided into positive jarimah and negative jarimah, Judging from the person who is victimized by the action, which is also divided into individual jarimah and community jarimah, Seen in terms of its special nature, which is divided into ordinary jarimah and political jarimah.

Copyright Infringement in Islamic Criminal Law

Copyright in contemporary Islamic scholarship is known as haq Al-ibtikar. From the word there are two sets of words namely had and al-ibtikar. The definition of had is a specialty owned by a person or group of people over something. While etymologically al-ibtikar comes from Arabic in the form of mashdar isim, al-ibtikar itself means to create. However, if it is said 'ibtikar al-syai'a means "he has created something".¹⁸ Haq al-ibtikar in terminology is "the privilege of a creation that was first created". Fathi al-duraini defines it as:

"The description of the thought that a scientist produces through his thinking and analysis, the result is the first discovery or creation that has not been discovered by the scientist before. This is the basis for the right of ownership for the creator of the copyrighted work on his copyrighted work. But this definition does not seem to indicate directly the existence of rights in the copyrighted work. According to Sa'duddin bin Muhammad Al-Kibi a contemporary scholar of copyright on the work (haq at-ta'lif) that is: "Something (right) that has been fixed and exists in books, papers, essays and anthologies are considered as property rights to it, as well as the right to copy it."

What is meant by property rights is that this right is considered a property right, while the right to copy is the right to reproduce written works. This right belongs to every author or writer as the author of his written work. While according to Wahbah Az-Zuhaily copyright of written works (haq- al-ta'lif) is the right of ownership of the work for a writer who is preserved in shar'i. This right is preserved because of its equal position with other property rights, so that other parties are not allowed to use without the permission of the owner.¹⁹

¹⁷ Ahmad Hanafi, *Principles of Islamic Criminal Law*....., p. 6.

¹⁸ A.W. Munawwir, *Munawwir Dictionary* (Publisher: Progressive Library, 1997), p. 101.

¹⁹ Wahbah Al-Zuhaily, *Fiqh Al-Islam wa Adilatuhu*, (Dar al- Fik, Damascus, 1986), p. 2861.

Copyright infringement according to Islamic criminal law is that copyright is a new right in the world of Islam and can be said to be contemporary, in the past there has been no specific rules relating to copyright. So we can not find nash Al-Quraan or Hadith yang clearly explain about copyright. Copyright infringement can also be said to be a violation of the property rights of others that cause a material or non-material loss to the creator because of the taking of power secretly. If attributed this is similar to the main elements of theft in Islamic crimes as follows: a. Goods taken in the form of property.

Of course this is in accordance with the previous explanation that copyright is a treasure because it contains economic rights that can provide benefits to the creator materially. b. The property taken belongs to another person. This is in line because it is also mentioned earlier that copyright is or is included in the property rights for those who create it, then if the benefits of moving with then certainly copyright has been taken by others. c. Against the law, clearly in this case both contain elements equally against the law. Because it is very clear Al-Qura'an prohibits theft, has been explained in surah Al-Maidah verse 38.

Definition of Intellectual Property Rights

Intellectual property rights (*huquq milkiah fikriah*) is one of the ownership models that emerged in contemporary times. The emergence of this type of ownership is the result of the development of science and technological advances. Intellectual property rights are known by different terms. Among them are haqqul Ibtikar (work of invention) huquq milkiah ma'nawiyah (ownership rights in meaning), intaj'ilmi (scientific work) and huquq milkiah adabiah (intellectual property rights). However, all of these terms have the same meaning, namely the right of ownership of something that is meaningful.²⁰

Islam's Position in Safeguarding Intellectual Property Rights and the Evidences that Support It.

Eliminating intellectual property rights against someone is something that is prohibited by Sharia (disobedience). Because it contains elements, gharar, tadlis, lies, theft, deceitful harm and taking other people's gak. The things mentioned above are things that are prohibited and forbidden in Islam. Some of them are even included in major sins. One of the proofs of Islam's protection of intellectual property rights is that Islam commands to speak and act honestly, and those who do so will be rewarded with paradise. This is the basis for the preservation of intellectual property rights.

The basis for the preservation of intellectual property can also be seen in the rules of sanad in hadith science, where the names of the narrators of hadith are mentioned one by one, up to the Messenger of Allah (peace be upon him) in each hadith. Similarly, the method of quoting marwiyah (something narrated) and books is known as al-iijazah or al-idznu bi riwayat and anyone who wants to narrate a hadith must first ask permission from the narrator who has narrated the

²⁰ Abdurraziq As-Sanhuri, *Al-Wasith Fi Syarhil Qanuni Mishri*, Al-Jadidi, Dar Nadhah Al-Arabiah, (Cairo Volume 8), p.276.

hadith so that the narration is considered valid²¹. Imam Sayuti has written a book specifically related to this issue which is a monumental work entitled: *al-fariq, baina al-muallif was sariq* (the difference between a writer and a thief). The Messenger of Allah (saw) said:

نضر الله امرأ سمع منا شيئاً فبلغه كما سمع

The meaning of the hadith is to convey something according to what is heard or no less no more.

Evidences of Islamic Maintenance of Intellectual Property Rights

In addition to the basics of Islamic maintenance of intellectual property rights in general as described above. There are also specific arguments related to intellectual property rights, which Islam classifies into property that cannot be cheated and taken ownership. Rasullullah Saw said:

عن أبي حرة الرقاشي عن عمّه رضي الله عنه، أن رسول الله صلي الله عليه وسلم قال : "لا يحل امرئ مسلم إلا بطيب نفس منه".

"The wealth of a Muslim is to be guarded and protected; it is not permissible for anyone to take it and possess it by false means."

عن عائشة رضي الله عنها قالت: أن رسول الله صلعم قضى أن الخراج بالضمان

Aisha (r.a) reported: The Prophet (peace and blessings of Allah be upon him) decreed that anything that has been damaged must be compensated (hasan sahih Hadith). This Hadīth explains that whoever compensates for something, the recipient of the compensation has the right to use the compensation money. In this case, it is the recipient of the compensation if his work is damaged by someone else.²² Rasullullah Saw also said:

عن أبي هريرة رضي الله عنه، أن رسول الله صلي الله عليه وسلم قال : من غشنا فليس منا

"Whoever deceives us is not one of us."

The meaning of this Hadīth is that deception of all kinds is forbidden, and a person who commits deception or does something that is contrary to the instructions of the Prophet (peace and blessings of Allāh be upon him) is out of the character of a Muslim. Islam also forbids theft of all kinds, and it is obligatory to return stolen goods. Islam also imposes hadd punishment on the perpetrators of sariqah (theft) and ta'zir punishment on the perpetrators of *ghash* (mugging). This is one of the clear proofs that Islam is very protective and protective of one's property.

²¹ Dr. Ali Bin Abdillah Usairi, *Milkah Fil Fiqh Al-Islami*, *Huquq Milkiah Fikriyah Magazine*, University of Naif Arabiah Lil Ulum Aminiah, p. 209.

²² Abdul Hamid Thahmar, *Haq Al-Muqaran*, p. 174.

أن من سبق إلى ابتكار أو تأليف أو انتاج علمي يكون قد سبق إلى أمر مباح، ومن سبق إلى مباح فهو
أحق به من غيره يجوز له التصرف والإنتفاع به

Meaning: Whoever is the first to discover and invent something has done something permissible. And whoever is the first to do something permissible is more deserving of it than anyone else. It is also permissible for him to take advantage of these inventions and trade them in the market for profit. All of the above evidence confirms that Islam recognizes intellectual property rights and protects them from the hands of vandals and robbers. Whoever robs it is obliged to pay compensation.²³

Conclusion

Copyright should get legal protection from the State and religion. And all forms of copyright infringement is a crime that is so detrimental that it should be avoided and eliminated. Islam expressly recognizes and protects copyright and views all forms of copyright infringement is a crime that must be avoided and eliminated. Copyright infringement in Islam is strictly prohibited because of the element of deception, is a form of theft, kill the creativity and spirit of thinking of the inventor of the work, and violate the purpose of Islamic law or called by damaging the mind (the work).

References

A.W. Munawwir, *Munawwir Dictionary* (Publisher: Progressive Library, 1997)
Abdul Hamid Thahmar, *Haq Al-Muqaran*
Abdul Qadir, *al-Tasyri al-Jina'i al-Islami. Muqaranan bil qoununil wad'iy*,
Translator of Tsalisah Team, Encyclopedia of Islamic Criminal Law, Volume
III, (Bogor: Karisma Ilmu 2007)
Abdurraziq As-Sanhuri, *Al-Wasith Fi Syarhil Qanuni Mishri*, Al-Jadidi, Dar Nadhah
Al-Arabiah, (Cairo Volume 8)
Adami Chazawi, *Criminal Law Part I*, (Jakarta: PT Raja Grafindo 2010)
Ahmad Hanafi, *Principles of Islamic Criminal Law*, (Jakarta: Bulan Bintang, 5th Cet.,
1993)
Ahmad Hanafi, *Principles of Islamic Criminal Law*, (Jakarta: PT Bulan Bintang,
1990)
Ahmad Wardi Muslich, *Introduction and Principles of Islamic Criminal Law Fiqh
Jinayah*, (Jakarta: Sinar Grafika, 2006)
Al-Fauzan, *Summary of Complete Jurisprudence*, Volumes I & 2, (Bekasi: PT Darul
Falah, 2005)
Ali as-Shabuni, *Tafsir Ayat Ahkam as-Shabuni Volume I Translation Muammal
Hamidi and Imran A. Manan*, (Dar al-Ilmiah, 1995)
Andi Hamzah, *Principles of Criminal Law*, (Jakarta: Rineka Cipta 2004)
Dr. Ali Bin Abdillah Usairi, *Milkah Fil Fiqh Al-Islami, Huquq Milkiah Fikriah
Magazine*, University of Naif Arabiah Lil Ulum Aminiah

²³ Abdul Hamid Thahmar, *Haq Al-Muqaran*, p. 170.

Eddy Damian, *Intellectual Property Rights*, (Bandung: Publisher of P.T. Alumni, 2006) Ibn Mandzur Afriki, *Lisanul Arab*, Dar-Al-Ma'arif, (Cairo: Volume 13 Marsum, *Jinayat Islamic Criminal Law*, (Yogyakarta: UII Press Yogyakarta, 1991) Mauhammad Syahrur, *Limitation of Islamic Criminal Law*, (Semarang: Walisogo Press, 2008).

Nadang Alamsah D and Sigit Suseno, *Module I Definition and Scope of Special Crimes*, (April 2020)

Ni Ketut Supasti Dharmawan, *Harmonization of Indonesian Intellectual Property Law*, (Denpasar: et.al, 2018)

Teguh Presetyo, *Criminal Law*, (Depok: PT. FH UII Press. 2004)

Wabah Al-Zuhaily, *Fiqh Al-Islam wa Adilatuhu*, (Dar al- Fik, Damascus, 1986)