

Copyright on the View of Indonesia Law and Islamic Jurisprudence

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Abstract: Copyright problem arises nowadays, in some countries, piracy even becoming legal and usual. This short article seeks to explore various opinions about the copyright and how the solution of various problems it raises. This study is based on library research and finds a variety of eligible data sources.

Two extremes of opinion are at two opposite poles which to accept or reject the existence of copyright protection. But it seems the parties agreed more than reject. By reading from the source of Islamic Jurisprudence, especially if using *maslahah* then our empathy towards the creators will arise. How in the present if we are not trying to protect their own original work, then no one will appreciate the effort tired creators. For the government, it is suggested to protect the innovator efforts to combat piracy and appreciate innovators. Communities also need to be educated to appreciate the work of others and also be encouraged to create the original works. Thus it is expected to create creative and productive society so Islamic nation no more left behind other countries.

Key words: copyright; Indonesia law; Islamic Jurisprudence

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1. Introduction

At the height of the era of Islamic Rulers, scholars would get goldfinch from the ruling caliph in appreciation for their efforts in advancing science. So they did not have any problem of piracy in their work. Their academic writing is free to be copied because they had enough income from the king.

But at present, copyright is a very valuable thing to get royalties from all of the works of creation. Especially for academic writers since they did not get enough attention from government institutions. When artist could earn large sum of money for their performance, copyright is used in order to survive for the academics. And piracy becomes their nightmares.

In business world, copyright can be abused to maximize the profit. Which sometimes inspired by greed. While they reasoned in case to cover the cost of research that does not little, people who need this product, for example in IT (information technology) software business, had to use illegal software. The reason is because of the high cost charged to consumers.

Business Software Alliance reveals that: the greatest pirate in the world is Georgia, while Indonesia at the 12th stage. World piracy rate rose to 41% in 2008 after the previous year to reach 38%, because of PC shipments to China, India, and Indonesia, which are the biggest piracy countries

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Meanwhile, Tempo magazine wrote about the sequence of software pirate countries in the world:

- (1) The Vietnam
- (2) Ukraine
- (3) China
- (4) Zimbabwe
- (5) Indonesia

And unfortunately, Indonesia is known as one of the largest exporters of illegal disc producer. Pirated goods are widely spread in the shops because of large demand from people who are not aware of copyright. Even big businesses are also still use pirated software.

Rumah Berita Antara in the year 2007 showed that pirated songs circulating in the market and reaches 500 million PCs. Assessed the loss of 1 trillion rupiah, while artists and producers lose 2.5 trillion rupiah. According to Binsar Silalahi, this is due to:

- (1) the company is less productive
- (2) A Weak law enforcement
- (3) People like a cheap things though it breaks the law of copyright

What about in the view of Islam, especially in terms of *ushul* jurisprudence on this point? This short article seeks to excavate various opinions about the copyright and how the solution of various problems it raises.

2. Formulation of Problem

The problem is the questions that will be answered by this study. Beginning on the evidence, then the crux of the problem is:

- (1) What was the definition of copyright.
- (2) What was opinion about copyright in *ushul* jurisprudence?
- (3) What was the basic logic used to determine the law.

3. Purpose of Research

The object of this study is as follows:

- (1) To know the definition of copyright.
- (2) To know the various copyright laws in *ushul* jurisprudence.
- (3) To find the basic logic used to determine the law.

4. Research Methods

This study is a literature research (library research) and finds a variety of eligible data sources.

- (1) Methods of Data Collection

This is a library research that is looking at the amount of literature research (library research), and then group them, analyzed and categorized according to the study.

- (2) Resource Data made from:

- (a) Book *ushul* jurisprudence to determine the rules or guidelines of the law.
- (b) A variety resources related to over the internet.

5. Discussion

5.1 Copyright (Positive Law)

5.1.1 Legal Notices

Before the independence day, Indonesia copyright issues arranged by Auteurswet stb 1912 Number 600. After Indonesian independence, the copyright is set in the law number 6 LN 1982. TH. 1982: # 15. then the law is changed by law number 7 of 1997 LN., 1997. No. 29 and the last was changed with the Law No. 19 on 2002, here after named by UUHC or Undang Undang Hak Cipta (the law of copyright). Why UUHC experienced some change? This was the cause:

(1) Development of national and international in commerce is growing very rapidly, copyright protection should be enhanced

(2) Indonesia participated in international agreements, particularly the TRIPS, and are obliged to adjust UUHC with international agreements

5.1.2 Meaning of Copyright

In UUHC mentioned that the rights are: the exclusive right to the inventor or assignee to publish or reproduce his invention or to grant permission for it to not reduce limitations in accordance with laws and regulations that apply (article 1, item 1). Inventor is someone or some people together that the inspiration to produce an invention based on the ability of the mind, imagination, dexterity, skill or expertise that is poured in a special and personal nature (Article 1 item 2). Invention is the result of each piece creator that shows originality in the field of knowledge, art or literature (Article 1, item 3). The copyright holder is the creator or the copyright owner (Article 1, item 4). From the above conditions, for someone who has fulfilled the conditions set by UUHC, have special rights to an invention works. As creator of the specific rights or copyright holders have the right to:

(1) Increase Creations, which means the author or copyright holder can increase the number of inventions by the same act, nearly the same or similar to the invention utilizing the same materials including removing create inventions.

(2) Announces Creation, meaning that the author or copyright holder can broadcast using any device, so that the invention can be heard, read or seen by others.

(3) Reproduce rights, copyright means the right material, the author or copyright holder can sue the infringing invention

In addition there are a number of terms used and recognized in copyright, among others:

(1) License: permission given by the copyright holder or holders of related rights to others to be announced and/or expanding the invention or its associated right products with specific requirements.

(2) Multiplication: the addition of the invention in whole or in part is very substantial with the same ingredients, including the removal of existing permanent or temporary.

(3) Announcement: reading, publication, exhibition, sale, distribution or dissemination of an invention using any tool until an invention may be read, heard or seen by others.

(4) Shareholder Rights: creator as copyright owner, or the person receiving the rights of creators, or other parties who receive more than the right to receive such rights.

(5) Rights: the right niche for the inventors or the recipient the right to publicize and propagate its creation, or to grant permission.

(6) Creations: creators of the results of each work that shows originality in the field of science, art and literature.

5.1.3 Scope of Copyright

In chapter 12 UUHC mentioned in this law protected inventions are inventions in the fields of science, art and literature and include:

- (1) Books, computer programs, pamphlets, face drawing and other papers.
- (2) Talks, lectures, speeches and similar to that.
- (3) Instruments props made for the importance of education and knowledge
- (4) Songs or music with or without text
- (5) Drama or musical drama, dance, pewayangan (traditional puppet) and the like.
- (6) Fine art in all its forms, art, photos and others
- (7) Architecture
- (8) Map
- (9) Batik Art
- (10) Photography
- (11) Cinematography
- (12) Translation, interpretation, adaptation and so forth

There is a case for photographic work, though work is protected by UUHC photography, if photography is photographed interest, then the copyright is belong to the photographed, as outlined in chapter 19 UUHC to increase and announce Creations. The copyright on portraits one must first obtain the permission of the person photographed or permission of his heirs within 10 years after the person photographed died. As an exception to the above provisions, not copyrighted to the following matters:

- (1) The result of open meeting of the state institutions
- (2) Regulations legislation
- (3) Oratory speech statehood or government office
- (4) Decision justice or judge setting
- (5) Results of arbitrage bureau or the like

But there are also things that are not regarded as copyright infringement, if the source, on:

- (1) Use of other inventions for educational, research, writing, and scholarly work that should not be detrimental to the interests of creators
- (2) Recruitment inventions of others, in whole or part, the need for defense use in and out of court
- (3) Taking other inventions to the needs of talks, stage act
- (4) Multiply the result by no means the invention for commercialization and forth as stipulated by law.
- (d) Copyright Registration

Basically copyright registration is not a necessity, because even without being registered copyright is protected by UUHC. It's just an invention that is not registered will be more difficult of proof in the event of a copyright violation, when compared with the registered copyright. It can be inferred from Article 5 of the present UUHC, unless proven otherwise considered to be the inventor is:

- (1) Persons whose name is registered in the public register of the invention at the director general; or
- (2) Persons whose name is mentioned in the creation or announced as the inventor on an invention

When read carefully the regulation above, it seems that the maker of the law expects that a copyrighted work is registered, it is intended to facilitate the proof when there is conflict or copyright infringement. In copyright law there is no specific rule about copyright registration, it is just that the law referred to the Directorate General of

maintaining the register of inventions and creations recorded in the public list, so obviously seen, that to get admission to the copyright need registration. For copyright registration process set forth in Regulation of the Minister of Justice Decree No. M.01.hc03.0.1.1987 date of October 16, 1987 on the registration of the invention. In the article I mentioned invention registration applications submitted to the Minister of Justice through the Director of the Patent and Copyright, with duplicate letters, written in the Indonesian language with double foolscap containing:

- (1) Name, nationality and address of the author
- (2) Name, nationality and address of the copyright holder
- (3) Name, nationality and address of the authority giver
- (4) Type and title of the creation
- (5) date and place the creation was being announced for the first time
- (6) copyright descriptions triplicate

Letter of application for registration may be filed only for an invention. But the question today is still a lot of inventors not use copyright registration board to protect his invention, this is what will eventually cause many problems in the future. With enrollment work of a person, theoretically copyright and the copyright holder is secure. For that in the future when other parties without the right to use, they must be able to prove it. Apart from the copyright owner can also claim other people who use copyright works without the right road. In addition, for copyright registration fee is much cheaper when compared to the cost of patent and trademark registration.

5.2 Different Opinion about Copyright

According to the forum from dudung.net, the piracy annoying the innovator for they not doing:

- (1) Research
- (2) Think (think originally)
- (3) Power (use energy to produce works)
- (4) Capital (issued capital)
- (5) Pph (paid income tax)
- (6) Promotion
- (7) Permissions for production

So they can copy cheaply without ever appreciating the original author. So they will affect the nation by arbitrarily. It is a crime, but a lot of people actually prefer pirated goods for reasons of price. While the government never care about low purchasing power of the community.

But the other side who support the concept of copyright, there are other problems it poses:

- (1) Who comes first will get the patent rights without caring what others have long been working on it or even a nation's culture. Such as patented cases tempe Japanese food but it is common in Indonesia.
- (2) Products become more expensive than the actual price of raw materials.
- (3) How long does copyright belongs to someone? is it allowed if these rights are limited to a very few years ? Then other people can admit it?

In *ushul* jurisprudence, copyright law can be relied upon in *maslahah mursalah* and can also relied on *dzari'ah*. The MUI fatwa on IPR (Intellectual Property Rights) has also been released. Yet another opinion stating that Islam embraced the concept of "complete ownership" on the sale and purchase. If we adopt the copyright, then inevitably we will need to remove the concept of perfect ownership which were aplenty because it is diametrically collide. Whereas *Mashalih mursalah* was not eligible to be *syar'i* proofs (an-Nabhani,

Al-Syakhshiyah Al-Islamiyah, 3/444). As a compromise, do not let creator to take excessive advantage. Whereas forced society which do not have enough money to buy the original, also cannot sounding asleep until all they used is pirated goods.

Syafrinaldi in the paper he wrote about copyright in Islam wrote that in arabic the property referred to *al-Mal*. Ibn Manzuur defines property as something known , and what you have the whole thing. In *al-Qaamuus al-Muhiit* also said that the property is what you have in all things. Ibn al-Qaabisii Mahmuud, said that the property is the name for the other man created for the needs of humans and can be taken and managed independently. The scholars of mutaqaaddimin (the elder group) Hanafiah argue that property is tangible. While scholars of mutakhkhirin (the latest group) Hanafiah, Shafii, Hanbali, Maliki believes that in addition to owning property there, also have rights. Based on the '*urf*' (according to scholars is what is known and implemented custom is among humans and can be a source of law is not contrary to the laws of *Shari'ah*), spoiled things can even valuable. And the majority of the jurists also agree in the concept of property rights.

But opinion is split into two time jurists asserted that:

- (1) Benefit but does not include the concept of property ownership concepts, eg rental void if the owner dies
- (2) Benefit of including the concept of property, for example: rent not null and can be passed

Classical jurisprudence does not recognize IP or abstract thing, which is owned and known benefits. The concept of ownership is based on the Quran *surah* 2: 284. Islamic ownership is divided into:

- (1) Owned Personal
- (2) Owned Public
- (3) Owned by country

Qarafi Imam al ijtihad say that copyright cannot resell because it is not separate from the original source. But this opinion is opposed by Fathi and Daraini that suggested that copyright can be detached from the owners so it can be resell. IP protection in Indonesia based on the number 1/Munas/VII/MUI/15/2005 MUI fatwa. The conclusion of the paper Syafrinaldi about copyright in Islam are as follows:

- There is no limit on the ownership of IP as the current positive law
- There is no licensing scheme that requires the other party to pay royalties
- Directly attached to the owner's property, should not be patentable
- Owned by not only material but also social work
- Absolute ownership is only for Allah

Rizwan Kazi collects some scholars in his opinion, entitled No Copyright in Islam. The essence of the paper is as follows:

- (1) No intellectual copyright, a person cannot quote the Quran and Sunnah or anything related to this *deen* (religion) and claim it for himself, as this *deen* Belongs to Allah (*swt*)
- (2) The right of disposal (The original seller cannot stipulate any conditions Have on the buyer once the goods has left his hands.)
- (3) Copyright is non- Muslim Innovation

But this is disputed by Ahmed in his comment on the blog to collect the opinion of the scholars:

(When) The Standing Committee was asked: Is it permissible for me to record (a copy of) a tape and sell it without asking permission from its author, or from the publisher if the author is no longer alive? Is it permissible to make many copies of a book and sell them? Is it permissible to make a copy of a book and not sell it, rather keep it for myself, if it is marked copyright; I do not have to ask for permission or not?

They replied: There is nothing wrong with making copies of useful tapes and selling them, or making copies of books and selling them, Because that's is Helping to spread knowledge, unless that's Their authors have stated this is not allowed, In which case permission Their must be sought.

End quote from *al-Fataawa al-Daa'imah Lajnah*, 13/187

A statement from the Islamic Fiqh Council concerning intellectual property rights in Which it says:

Trade names, trademarks, copyright and patents are all rights belong exclusively to Which Their owners. In modern times They have come to have a considerable financial value. These rights are Recognized according to shari'ah, and they should not be violated.

This is the basic ruling, but in some cases it may be permissible to make copies without the author's permission. That applies in two cases:

(1) If something is not available in the marketplace, if there is a need for it and it is Charitable distribution, not for sale or for making a profit.

(2) If there is a great need for it and its authors are asking for more than its price, and They have already made enough money to cover the cost of Producing this program with a reasonable profit-which is to be decided by people of experience. In that's case, if it serves the Interests of the Muslims, it is permissible to copy it, so as to ward off harm. But that is subject to the condition that it not be sold for personal gain.

And Allaah knows best

Another opinion that anti-copyright tells the history from the enactment of copyright protection. Namely the Paris Convention agree to the at 1883, 1886 Bern convention. WIPO in the WTO, all joined country must protect copyright. The purpose of this statement is that the whole country wants to join the World Trade Organization must accept the agreement to protect copyrights and supervised by the World Intellectual Property Organization. Ownership (ownership) is *gharizatul baqo*. Namely martial instincts. Therefore, in Islam taught that if someone teaches, then it can ask for a reward. But in the case of purchase of a diskette for example, there is different law. So when the ownership of a diskette moved, all that is in it including software already owned by the buyer. And there shall be no requirement that the software is not available to be copied. It is based on the following hadith:

From 'A'isha reported:

"Barirah approach a woman, she is a *mukatab* which will be freed by his master if paying 9 awaq (1 awaq = 12 dirhams = 28 gr). Then Barirah said to her, "If your lord willing, I will pay for such amount, and your loyaliti will be mine"

Mukatab then came to her master, and tell it to them. Then they reject and require that loyaliti [of the slave] will be theirs. It was then told by 'Aisha (the prophet's wife) to the Prophet Muhammad. The Prophet Allah said: "Do it." Then Barirah execute these commands and The Prophet stood, and addressed the people. He immediately praise God and glorify His name. Then said: "There will ignored, one that requires a condition that does not fit what is stated in the Qur'aan." Then he said: "Every Provided that there is nothing in the Qur'aan, then the condition is falsehood. Qur'aan more right, and the conditions (listed in the Qur'aan) binding. Loyaliti owned by the releaser." The other is his saying: "whoever get earliest of something permissible, then he has the right (of it)".

Kazi Rizwan then closes with the statement that IPR is economic colonization.

A scholar (*ulama*) from Malaysia fitter (*ijtihad*) for that:

(1) Should *Tadarruj* (fade to end) to overcome piracy

(2) Capitalist give the prices are too expensive, so people can not have what is generally required

(3) So the ruling is not clear, it is allowed with limit (Quran, 2: 173)

(4) But do not engage business piracy (hijacking)

Syed Muhammad Umar Bazmool, Professor of the University of Ummul Quro, Mecca: copyright categorize this as “*al-huqooq al fikriyyah*” or “*al-huqooq al-ma’nawiyyah*”. Sheikh Salih al Husayyin, executive chairman of the Presidency of the two Sanctuaries and Dr. Fathi ad Duraynee also presents his agree with the concept of copyright. He bases this on the *hadith* below: The Messenger (sallallaahu alayhe wa sallam) said about buying and selling: “The two participants in a sale have a choice (to affirm or cancel the sale), so long as they do not separate from each other. So if they are truthful and mention all details then they will be blessed in their sale. But if they lie and cover things up, then the Blessings of Their sale will be eliminated.” as has been Reported from Aboo Ubayd Al-Qaasim ibn Sallaam and others, “From the *baraka* (Blessings) of knowledge is referencing each statement to the one who said it.” So there is no blessing if we are not referring to an opinion of its members. Especially in religious knowledge.

In other writings, admin from wordpress.com blog recounts that Kingsoft (English-Mandarin software), in China 90% illegal. Ren Jian, chief operating officer of Kingsoft, said: “Piracy has had a big impact on us, making it so we cannot get powerful and Compete with Microsoft.” Economics for Dummies also make it clear that the absence of copyright protection will kill innovation. We are condemned to be consumers, not creators of technology. Who’d creations if not appreciated? In this case the authors try to associate this with the hadith of the Prophet that an employee be desirable given the same food and clothing to the master. In another hadith also submitted that we need to provide wages to employees before the sweat dried. This means that Islam recognizes that human beings in the work still wish to incentives. While there are people who work as self-actualization and not asking anything in return.

Dewi Widya Ningrum from detikinet comment by her views asking whether true that piracy (especially in software product) enlighten people? Sosrodjojo Indra said that piracy results in:

- (1) The younger generation is not creative
- (2) Lazy creations
- (3) Brain drain master IT (information technology) because the incentive more attractive abroad
- (4) The local industry cannot sell because of cheap losers from hijackers
- (5) BSA (Business Software Alliance), should work with officials to combat piracy

Writers try to associate this with a tradition that no medication for an illness of illegal goods. Means to overcome this problem, we cannot put the ways Robin Hood is by robbing or stealing.

Oka Mahendra wrote that cite a paper is allowed if:

- (1) Not copy- paste the entire contents of
- (2) Authors name and website address printed
- (3) Provide a link to the original site
- (4) Approving the disclaimer

Why plagiarism of website content is not permitted?

- (1) Not creative
- (2) Google hate (hated by google search engine so it is not included in the results)
- (3) Delete Yahoo (Yahoo even harder with sanksinya website with content that is clear is plagiarism)
- (4) Wordpress warn (wordpress website that often feature a variety of opinions from the author, will show a writer known simply copy- paste from other writers)

How to overcome book piracy according to 10.000books.com:

- (1) Cuts price
- (2) Uphold the law
- (3) Education
- (4) Publish your own e-book

5.3 Basic Law Used as Theoretical Background for Copyright

- (1) Spread science and religion:

عن عبد الله بن عمرو أن النبي صلى الله عليه وسلم قال بلغوا عني ولو آية

“Give me even one verse” (Bukhari, Turmudzi and Ahmad)

O Messenger, deliver what is revealed to you from your Lord. And if you did (what was ordered, it means) you have not delivered His trust. Allah will protect thee from men (who mean mischief). Surely Allah does not guide those who reject Faith (Al Maidah: 67)

- (2) Prohibited in conceal knowledge:

بلغوا عني ولو آية

“Give me even one verse” (Hadith)

And (remember) when Allah took a covenant from those who were given the Scripture (He said): “Be it known and clear to mankind, and not to hide it.” Then they threw it away behind their backs and they changed it for a small price. So evil is that which they receive (Ali Imron, p. 187).

Verily, those who conceal what We have sent down clear signs (clear) and the Guidance, after We have made it clear to mankind in the Scripture: such are accused of Allah and accursed (also) by all (creatures) to curse, except those who repent and mend and make manifest (the truth), then toward whom I relent and I am the Oft-Returning, Most Merciful (al Baqoroh, pp. 159-160).

Verily, those who conceal what Allah has sent down of the Book and sell it for a small price (cheap), they actually do not eat (do not swallow) but fire into their bellies, and Allah will not speak to them on the Day of Judgment and purify them, and theirs will be a painful torment. They are the ones who buy error for guidance and punishment for forgiveness. How patiently they will be in the Fire (al Baqoroh, pp. 174-175).

- (3) Prohibited commercialize religion (Tafsir al Manar, Rashid Ridha)

Hadith of the Prophet narrated by Abu Daud, Tirmidhi, Hakim from Abu Huraira:

“Whoever asked about a science, and he hid, then it will be interoperable clothes on her mouth from a fire on the Day of Resurrection.”

What is meant by knowledge is compulsory (fard ayn) and must also propagate the trees Islamic teachings on faith, worship, and morals mu’amalah. Beyond that, the ruling could be obligatory kifayah, Sunnah or permissible, depending on the individual’s urgensinya and people (al-Zabidi, Taisirul Wusul ila Jami ‘al-Ushul, vol. III, Cairo, Mustafa al-Babi al-Halabi wa Auladuh, 1934, p. 153)

- (4) Prohibited ask for a reward for preaching:

And I never ask for a call-honor’s sake; my reward is only from the Lord of hosts. (Ash-Shu’ara 26, p.109)

- (5) The Concepts of Islamic ownership:

To Allah belongs all that is in the heavens and whatsoever is in the earth. And if you manifest what is in your minds or conceal it, Allah will bring you to account for it. He will forgive whom He wills and punishes whom He wills; And Allah has power over all things (al-Baqarah, v. 284).

(6) An incentive for the work of others

أعطوا الأجير أجره قبل أن يجف عرقه

Give the laborer his wages before the sweat dried. (Reported by Ibn Majah)

hadith of the Prophet narrated by Bukhari and others from Abu Huraira:

“When a man has died, cut off his record, except three, namely charity jariyah (endowment), beneficial knowledge, and a righteous child who prays for him.”

(7) Academic ethics code

The Messenger as has been Reported from Aboo Ubayd Al-Qaasim ibn Sallaam and others, “From the baraka (Blessings) of knowledge is referencing each statement to the one who said it.”

(8) Do not injure the sale and purchase agreement or doing piracy

The Messenger (sallallaahu ‘alayhe wa sallam) said about buying and selling: “The two participants in a sale have a choice (to affirm or cancel the sale), so long as they do not separate from each other. So if they are truthful and mention all necessary details, then they will be blessed in their sale. But if they lie and cover things up, then the blessings of their sale will be eliminated.”

“And do not eat up your property among yourselves in vanity” (Al – Baqoroh, p. 188)

Daruqutni Hadith of the Prophet narrated from Anas (hadith marfu’): “not lawful property of a Muslim except with his consent.”

Hadith of the Prophet:

“He asked, ‘do you know who the person is insolvent (bankrupt, Arabic) is?’ Said they (companions): ‘people who go bankrupt among us is one who has no money and goods at all’. Then the Prophet said: ‘actually insolvent (bankrupt before) of my Ummah is the person on the Day of Judgement brings many good practices, such as prayer, fasting and almsgiving. It also brings a variety of bad practices, such as cursing, blame, take another person’s property, kill and beat people. So good practices given to those who have wronged/injured and if this is not enough, then the bad practices of those who have mistreated it transferred to the wrong, then he was thrown into the fire.”

Buying or wearing illegal mp3 for example, can be classified according to the author at sadduzzari’ah:

- In language, dzariah is a “path to something”
- An (act) road in question is that can result in unsavory deeds or admirable.
- A road that can lead to things that should be condemned or prohibited named “Sadd dzari’ah” which means to prohibit or refuse to do so for

Until need to be avoided. Insha Allah buying original products even more expensive, would be a blessing.

(9) Piracy is not the way to educate the people of the nation:

عن أبي الدرداء قال قال رسول الله صلى الله عليه وسلم إن الله أنزل الداء والدواء وجعل لكل داء دواء فتداؤوا ولا تداؤوا بحرام

“From abi Darda said, the Prophet said: Allah sends down diseases and drugs. And make every disease has a cure. So have a cure, and do not seek treatment from the unclean” (Abu Dawud)

(10) Rights attached to the patent owner of ‘A’ishah:

“Barirah approached a woman, namely a mukatab to be freed by his master if paid 9 awaq (1 awaq = 12 dirhams = 28 g). Then Barirah said to him,” If your master is willing, I will pay for their number, then your loyalty will be mine. “the Mukatab then went to his master, and tell it to them. then they refused and require that loyalty [the slaves] remain with them. Thing was then told Aisha to the Prophet Muhammad. Rasulullah SAW said: “Do it.” then Barirah execute the command and the Prophet stood up, and then delivering the sermon in the presence of humans. He immediately praised God and lauding his name. Then

said: "There will be ignored, someone who requires a condition that is not in accordance with what is stated in the Book of Allah. "Then he said again: "Any condition that is not in the Book of Allah, then the condition is falsehood. Book of Allah is more entitled, and the conditions (listed in the Book of Allah) is binding. Loyalty owned by liberating."

Another his saying: "Whoever get something earliest permissible, then he is the most eligible person".

(11) Obey ulil amri which have established Copyright Law.

O ye who believe, obey Allah and obey the Messenger (His), and ulil amri among you. Then if you differ on something, then return it to the God he (Muhammad) and the Prophet (Sunnah), if you truly believe in Allah and the Last Day. That is good (advantageous) and better in the (an-Nisa, p. 49).

(12) Forced Under the circumstances, allowed to do the forbidden, in this case using pirated goods:

He has only forbidden you carrion, blood, pork and animals (when slaughtered) is called (name) other than Allah. But whoever the state was forced (to eat) when he was not wanted and not (also) exceeds the limit, then there is no sin for him. Allah is Forgiving, Merciful (al-Baqarah, p. 173).

In ushuliyah rules stated that, *الامور بمقاصدها* (each case depends on its purpose, Abdurrahman as- Suyuti Jalaluddin). This means, for example, to copy expensive books published abroad by the author may be if compelled and without any intention to hijack it. But even better if you can work together for a joint venture or buy and then stored in the library for all to read.

6. Conclusions and Recommendations

Ulama addressing the problems of copyright varies. Because there is no proof that the exact texts about copyright is mentioned in *quran* and *hadith*. Although it can be get "*qiyas*" with previous examples, nonetheless it is still a new thing. Two extremes of opinion are at two opposite poles which to accept or reject the existence of copyright protection. But it seems the parties agreed more than reject. And the authors themselves are more inclined to admit it because of the stronger proof. Especially if using *maslahah* then our empathy towards the creators will arise. How in the present if we are not trying to protect their own original work, then no one will appreciate the effort tired creators. For the government, it is suggested to protect the innovator efforts to combat piracy and appreciate innovators. Communities also need to be educated to appreciate the work of others and also be encouraged to be able to create the original works. Thus it is expected to create creative and productive society so Islamic nation no more left behind other countries.

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