

RECONSTRUCTING THE CONCEPT OF COPYRIGHT AS *AL-HUQŪQ AL-MĀLIYAH* IN ISLAMIC LAW

Tarmidzi¹ , Anindya Aryu Inayati^{2*} , Muhammad Asro³ , Jumailah⁴ 

^{1,2,4} Universitas Islam Negeri K.H. Abdurrahman Wahid Pekalongan, Indonesia;

³ Sunan Gunung Djati State Islamic University, Bandung, Indonesia

Abstract: As part of intellectual property rights, copyright has become a growing issue in Islamic law, especially regarding ownership classification. While positive law recognizes copyright as an economic right that can be transferred and inherited, Islamic law presents differing views on whether it falls under *al-huqūq al-adabiyyah* (moral rights) or *al-huqūq al-māliyah* (economic rights with material value). This debate arises from the traditional Islamic view of ownership, which emphasizes tangible assets. With the rise of creative industries and technological advancements, there is an urgent need to reconstruct copyright as *al-huqūq al-māliyah* to ensure its legal protection. Within the framework of *maqāṣid al-shari‘a*, acknowledging copyright as an economic right aims to safeguard individual ownership, prevent exploitation and promote innovation. This study employs a qualitative method with a normative juridical approach, examining classical and contemporary *fiqh* literature alongside copyright regulations in Muslim-majority countries. The analysis applies inductive-deductive and comparative techniques between Islamic and positive laws. The findings show that copyright meets the criteria of *al-huqūq al-māliyah* because of its economic value, transferability, and inheritability. Islamic legal sources, including the Qur'an, Hadith, and scholarly interpretations, support its recognition. This reconstruction offers significant implications for strengthening copyright protection within Islamic legal frameworks and developing Shariah-compliant regulations suited to modern economic contexts.

Keywords: Copyright, *Huquq al-Māliyah*, Islamic Law, *Fiqh al-Mu'amalat*, Sharia Economic Law.

Abstrak: Hak cipta, sebagai bagian dari hak kekayaan intelektual, menjadi isu penting dalam hukum Islam terkait klasifikasi kepemilikannya. Meskipun hukum positif mengakui hak cipta sebagai hak ekonomi yang dapat dialihkan dan diwariskan, hukum Islam memiliki pandangan berbeda mengenai apakah termasuk *al-huqūq al-adabiyyah* (hak moral) atau *al-huqūq al-māliyah* (hak ekonomi). Perdebatan ini muncul dari pandangan tradisional Islam tentang kepemilikan yang menekankan aset tangible. Dengan meningkatnya industri kreatif, terdapat kebutuhan untuk merekonstruksi hak cipta sebagai *al-huqūq al-māliyah* guna memastikan perlindungan hukum. Dalam kerangka *maqāṣid al-shari‘a*, mengakui hak cipta sebagai hak ekonomi bertujuan melindungi kepemilikan individu dan mendorong inovasi. Studi ini menggunakan metode kualitatif dengan pendekatan yuridis normatif, menganalisis literatur *fiqh* dan peraturan hak cipta di negara-negara Muslim. Temuan menunjukkan bahwa hak cipta memenuhi kriteria *al-huqūq al-māliyah* karena nilai ekonominya dan dapat diwariskan. Sumber-sumber hukum Islam mendukung pengakuannya. Rekonstruksi ini menawarkan implikasi untuk memperkuat perlindungan hak cipta dalam kerangka hukum Islam sesuai konteks ekonomi modern.

Kata kunci: Keuangan Sosial Islam, Maqashid Syariah, Pemberdayaan Mustahiq, Perlindungan Harta (Hifz al-Mal), Zakat Produktif.

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* Corresponding author: anindya.aryu.inayati@uingusdur.ac.id

INTRODUCTION

Amid rapid technological advancements and digitalization, copyright infringement – such as piracy of books, music, and digital content – remains a pressing issue in Indonesia.¹ This causes harm, both economically and morally. Although the national legal system recognizes copyright as a form of individual ownership, scholarly inquiries that link copyright to the Islamic legal concept of *al-huqūq al-māliyah* are still notably limited. The Islamic perspective can offer a strong normative foundation for understanding and upholding the justice of ownership over intellectual works, particularly in the context of a value-based digital economy that increasingly demands ethical and legal protection.

Copyright is a form of intellectual property right that provides legal protection for an individual's intellectual creations.² In modern legal systems, copyright is recognized as an exclusive right inherent to the creator.³ Several international legal instruments, such as the Berne Convention for the Protection of Literary and Artistic Works and the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), have established copyright protection standards adopted by many countries. In Indonesia, copyright is governed by Law Number 28 of 2014, which affirms that copyright is an exclusive right granted to creators over their work, protected by law.⁴

Although copyright is regulated under Law No. 28 of 2014, numerous cases of copyright infringement continue to occur globally and nationally, underscoring the critical importance of effective legal protection.⁵ In Indonesia, a prominent example occurred on June 19, 2024, when Ari Bias and the Indonesian Composers Association (AKSI) filed a report with the National Police's Criminal Investigation Unit (Bareskrim Polri) against singer Agnez Mo for alleged copyright violations under Article 113 (2) of the law. Further intensifying the legal debate, on March 10, 2025, a coalition of 29 singers and songwriters under the Gerakan Satu Visi movement submitted a judicial review request to the Constitutional Court, challenging five provisions of the Copyright Law that regulate public performance rights, royalty payments, licensing authority, and criminal sanctions for unpaid royalties. According to Armand

¹ Zuljarti Wa Ode and Fitriah Faisal, "Uncharted Water: Indonesia's Copyright Challenges in the Digital Age," *Int'l JL Changing World* 4 (2025): 103.

² Al-Makhzoumi et al., "The International Framework for the Protection of Intellectual Property Rights," in *Business Analytical Capabilities and Artificial Intelligence-Enabled Analytics: Applications and Challenges in the Digital Era*, vol. 2 (Switzerland: Cham: Springer Nature Switzerland, 2024), 279–88.

³ Ayu Palar et al., "Inclusive Rights to Protect Communal Intellectual Property: Indonesian Perspective on Its New Government Regulation," *Cogent Social Sciences* 9, no. 2 (2023): 2274431.

⁴ Christian Peukert and Margaritha Windisch, "The Economics of Copyright in the Digital Age," *Journal of Economic Surveys* 39, no. 3 (2025): 877–903.

⁵ T Tarmidzi, "Undang-Undang Hak Cipta Nomor 28 Tahun 2014 Dalam Perspektif Ekonomi Hukum Ekonomi Islam," *JURNAL HUKUM ISLAM* 15, no. 2 (2017): 201–28.

Maulana, leader of the Vibrasi Suara Indonesia (VISI) organization, the objective of the judicial review was not to escalate conflict, but to clarify the inconsistencies and ambiguities surrounding royalty collection mechanisms in Indonesia. These developments raise critical questions about how copyright is conceptualized not only in terms of positive law but also from an ethical and religious perspective, especially within a Muslim-majority context like Indonesia.

In this regard, reinterpretation of the Islamic concept of *al-ḥuqūq al-māliyah* becomes essential. In the digital era, the notion of wealth (*māl*) has expanded to encompass not only tangible assets, but also intangible forms of property, such as intellectual property rights, including copyright.⁶ As a country with both a Muslim-majority population and a pluralistic society, Indonesia faces unique challenges in aligning legal norms with ethical and religious frameworks.⁷ Cases such as those involving Agnez Mo and the VISI movement⁸ highlight the need for a conceptual framework that addresses not only legal and economic aspects but also the moral obligation of respecting the rights of creators, regardless of their religious background. Expanding *al-ḥuqūq al-māliyah* to include copyrights provides a normative foundation that is both theoretically grounded and socially relevant. It strengthens the legal consciousness among Muslims while reinforcing the role of Islamic jurisprudence (*fiqh*) in addressing contemporary *mu’āmalāt* issues. Thus, reinterpretation ensures that Islamic law remains responsive, just, and contributive to the evolving landscape of modern legal culture.

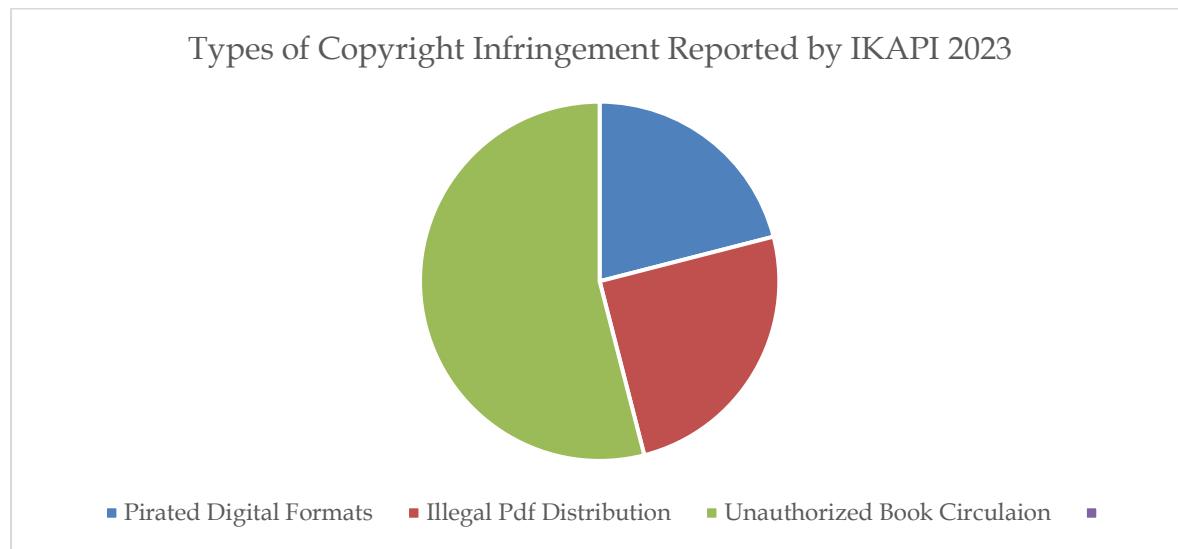
This reinterpretable framework is particularly urgent given the widespread and normalized nature of copyright violations, such as book piracy in Indonesia, which threatens the long-term viability of the creative and publishing industries. According to a 2023 survey by the Indonesian Publishers Association (IKAPI), 54.2% of publishers reported the unauthorized circulation of their books via online marketplaces. Additionally, 25% identified the illegal distribution of PDF files, and

⁶ M. I. Rosele et al., "The Concept of Wealth (Māl) in the Shari‘ah and Its Relation to Digital Assets," *Sage Open* 12, no. 2 (2022): 21582440221102424.

⁷ Doing Muhammad Darma Kartian and Muhammad Irsyadul Ibad, "Strengthening the Constitutional Law System (Legal Challenges and Strategies in Handling the Social, Economic and Political Crisis in Indonesia)," *Journal Equity of Law and Governance* 5, no. 1 (2024): 113–22.

⁸ The case involving Agnez Mo began when songwriter Ari Bias filed a lawsuit over the unauthorized use of his song "Bilang Saja", which resulted in a ruling by the Central Jakarta Commercial Court ordering Agnez to pay a fine of IDR 1.5 billion. This dispute sparked extensive debate regarding royalty governance and the enforcement of Indonesia's Copyright Law, even drawing attention from the Constitutional Court. In response to the imbalance of representation between singers and composers, a group of musicians established the *Vibrasi Suara Indonesia* (VISI) movement to advocate for singers' rights and their recognition within the national copyright regulation framework. Read: Pingkan Anggraini, *Penjelasan Armand Maulana soal Viral Gerakan Vibrasi Suara Indonesia*, <https://tinyurl.com/yj2f5dzy>

20.8% noted the presence of pirated digital formats on e-commerce platforms.⁹ The copyright infringements reported are illustrated in the following chart:



Source: IKAPI Report, 2023

These phenomena reflect deeper societal and structural issues regarding legal awareness, technological access, and knowledge commodification. Within Islamic jurisprudence, the classification of copyright has been debated and traditionally distinguished between *al-huqūq al-mālīyah* (economic rights) and *al-huqūq adabīyah* (moral rights). While some scholars argue that knowledge should be freely shared for the benefit of the *ummah*, contemporary jurists such as Wahbah Az-Zuhaili contend that copyright possesses economic value and thus qualifies as protectable property under Islamic law.¹⁰ This perspective, supported by the 1988 fatwa of the Islamic Fiqh Council under the Organization of Islamic Cooperation (OIC), aligns with the objectives of *maqāṣid al-shari‘a* by safeguarding both individual ownership and collective welfare. Therefore, aligning copyright protection with Islamic ethical principles is not only doctrinally justifiable, but also vital for promoting a fair and sustainable intellectual property regime.

In the contemporary context, reconstructing the concept of copyright as *al-huqūq al-mālīyah* has become increasingly urgent amid the rapid expansion of the digital economy and creative industry. Technological advancements such as artificial intelligence, blockchain, and digital-based economic systems have fundamentally transformed the ways in which intellectual works are produced, distributed, and monetized. Without a clear recognition of copyright as part of *al-huqūq al-mālīyah*,

⁹ Arys Hilman Nugraha, Menyelamatkan Perbukuan, *Berita Ikatan Penerbit Indonesia (Ikapi)* diakses melalui <https://www.ikapi.org/2021/05/31/menyelamatkan-perbukuan/#>

¹⁰ Tarmidzi, "Undang-Undang Hak Cipta Nomor 28 Tahun 2014 Dalam Perspektif Ekonomi Hukum Ekonomi Islam."

Muslim creators risk losing their economic rights and remain vulnerable to digital piracy, exploitation, and legal uncertainty in copyright-based transactions.¹¹ This issue is particularly relevant for Shariah-oriented creative industries, including Islamic publishing, religious-themed film production, and Islamic fintech applications, which rely heavily on copyright protection for sustainability and innovation. Nevertheless, both academic and non-academic authors largely agree that the enforcement of Indonesia's Copyright Law and MUI Fatwa remain weak, characterized by limited consistency and minimal tangible impact. Such convergence of views indicates that the problem lies not only in the legal and fatwa frameworks themselves, but also in the lack of a strong commitment to enforcement on the ground.¹²

Conceptually, the dynamics of the view on copyright develop into two major orientations: one side rejects the existence of copyright because it is perceived as restricting access to knowledge and creativity, while the other seeks to improve the existing system through policy reform to make it more equitable and adaptive to changing times. Therefore, a more adaptive reinterpretation of Islamic law is needed to respond to contemporary developments while remaining grounded in Shariah's core principles. In this regard, reconstructing the concept of copyright as *al-ḥuqūq al-māliyah* in Islamic law is not only a legal necessity, but also a strategic effort to strengthen the Shariah economy in the digital era. In the absence of strong copyright safeguards, creative industries grounded in Sharia principles, such as Islamic publishing, halal media, religious music, and educational content, face heightened risks of piracy and unauthorized distribution. This not only results in substantial financial losses, but also discourages innovation. Since these sectors depend largely on intellectual work infused with Islamic values, they hold both cultural and economic importance. This approach will provide stronger legal protection for Muslim creators, promote innovation in science and technology, and ensure that the Islamic economic system remains competitive at the global level.

This study employs a qualitative approach using the normative juridical method to analyze the concept of copyright in Islamic law, particularly in reconstructing its status as *al-ḥuqūq al-māliyah*.¹³ This approach aims to examine relevant Islamic legal norms and compare them with positive legal systems that have recognized copyright as an economic right with material value. This research is

¹¹ A. Rahman, *Hak Cipta Dalam Perspektif Islam Dan Hukum Positif* (Jakarta: Pustaka Syariah, 2020).

¹² A. Ma'ruf et al., "Implementation and Effectiveness of Copyright in Law No. 28 of 2014 and MUI Fatwa No. 5 of 2005.," *Al-Afkar: Journal for Islamic Studies*, 6, no. 3 (2023): 846–859, <https://doi.org/10.31943/afkarjournal.v6i3.462>.

¹³ Muhammin, *Metodologi Penelitian Hukum* (Mataram: Mataram University press, 2020).

qualitative in nature and adopts a doctrinal legal analysis focused on the conceptual framework of copyright within Islamic jurisprudence. It explores Islamic legal thought from classical and contemporary perspectives to establish a strong foundation for the reconstruction of copyright as *al-ḥuqūq al-māliyah*. The normative juridical method in this study involves an examination of Islamic legal texts, including the Qur'an, the Hadith, legal maxims (*qawa'id fiqhīyyah*), and scholarly fatwas, along with an analysis of statutory regulations on copyright within positive law. The objective is not only to understand existing legal concepts but also to offer a reinterpretation that is more relevant to current developments.¹⁴

The data in this study were obtained from various sources, divided into two main categories: a) Primary Sources, which include the Qur'an and Hadith as the foundational references in Islamic law; classical *fiqh* texts from major Islamic schools of thought, such as *Al-Mabsut* by Al-Sarakhsī (Hanafi School), *Al-Muhalla* by Ibn Hazm (Zahiri School), and *Al-Majmu'* by Al-Nawawi (Shafi'i School); as well as fatwas and legal decisions issued by Islamic legal institutions such as the International Islamic Fiqh Academy (*Majma' Al-Fiqh Al-Islami*), the National Sharia Council of Indonesia (DSN-MUI), and contemporary scholars such as Wahbah Az-Zuhaili and Yusuf Al-Qaradawi. b) Secondary Sources, which include contemporary literature on intellectual property rights in both Islamic and positive law, academic journals, books, and research discussing copyright from the perspective of Islamic law and the Shariah economy, and statutory instruments such as Indonesia's Law No. 28 of 2014 on copyright and international conventions such as the Berne Convention and the TRIPS Agreement.

The data collected in this study were analyzed using three main approaches. The inductive Approach identifies various concepts of rights in Islam and compares them to the concept of copyright in modern legal systems. This includes examining the views of classical and contemporary scholars on copyright and exploring how this concept has evolved across *Fiqh* schools. b. Deductive Approach, by analyzing relevant principles of Islamic law, such as the concept of ownership (*milk*), Islamic economic transactions, and the objectives of shariah (*maqāṣid al-shari'a*). This approach seeks to determine whether copyright can be classified as *al-ḥuqūq al-māliyah*, based on established criteria in Islamic jurisprudence. Through these methods, this study aims to critically analyze the conceptual framework of copyright within Islamic legal thought by examining its classification as *al-ḥuqūq al-māliyah* (proprietary rights). Through this analytical approach, this research seeks to identify normative justifications and legal implications that support a reinterpretation of copyright

¹⁴ Nanda Dwi Rizkia and Hardi Fardiansyah, *Metode Penelitian Hukum (Normatif Dan Empiris)* (Bandung: Penerbit Widina, 2023).

aligned with contemporary socioeconomic dynamics. Consequently, this study contributes to the theoretical advancement of Islamic jurisprudence and the practical formulation of legal strategies for strengthening the shariah-based creative economy in the digital age.

DISCUSSION

2.1 What is Copyright?

Copyright constitutes an exclusive legal entitlement conferred upon authors for their intellectual creations within the domains of art, literature, and science.¹⁵ It encompasses both moral rights, which safeguard the personal and reputational connection between the author and the work, and economic rights, which empower the author to authorize or prohibit the use of their work and to derive financial remuneration from commercial exploitation.¹⁶ Copyright protection extends to a broad range of expressions, including, but not limited to, books, musical compositions, cinematographic works, computer software, and other forms of digital content.¹⁷

In a legal context, copyright is governed by various statutory regulations. In Indonesia, for example, Law No. 28 of 2014 on copyright provides legal protection for the exclusive rights of authors and copyright holders. This legislation covers multiple aspects, including moral rights, economic rights, the duration of protection, and penalties for copyright infringement (Articles 9–10, Copyright Law, 2014).

Copyright, governed in Indonesia by Law No. 28 of 2014, plays a vital role in protecting creators' intellectual property rights. Although the law offers stronger safeguards aligned with technological and creative industry developments, its implementation still faces challenges and legal controversies.¹⁸ The enactment of Indonesia's Law Number 28 of 2014 on copyright introduced several significant improvements in the legal framework for intellectual property protection. One of its key advantages is the expansion of copyright coverage, particularly to include digital works, such as computer programs, graphic designs, and other forms of digital content, as stated in Article 40 (1). The law also simplifies the registration process by allowing electronic registration, emphasizing that copyright arises automatically

¹⁵ Peukert and Windisch, "The Economics of Copyright in the Digital Age."

¹⁶ Tarmidzi, "Undang-Undang Hak Cipta Nomor 28 Tahun 2014 Dalam Perspektif Ekonomi Hukum Ekonomi Islam."

¹⁷ Nyoman Arjana and I. Gede Agus Kurniawan, "LEGAL PROTECTION OF COPYRIGHT REGULATIONS FOR RELIGIOUS-BASED WORKS: A LEGAL AND MORALITY REVIEW BY RONALD DWORKIN," *Pena Justisia: Media Komunikasi Dan Kajian Hukum* 23, no. 1 (2024): 790–802.

¹⁸ T. Tarmidzi et al., "Pattern of Sharia Compliance In KSPPS In Pekalongan City (Analysis of Constraints And Solutions To The Deed of Financing).," *Islamic Banking: Jurnal Pemikiran Dan Pengembangan Perbankan Syariah*, 10, no. 2 (2025): 245-274.

upon creation and public dissemination, with registration serving a declarative rather than constitutive function. Another major advancement is the extension of the protection duration—literary, artistic, and scientific works are now protected for the life of the author plus 70 years after death, which surpasses the previous 50-year term. Additionally, the law imposes stronger penalties for copyright infringement, including up to ten years of imprisonment and fines of up to IDR 4 billion, aimed at reducing rampant piracy. Notably, the law also recognizes copyright as an asset that can serve as fiduciary collateral, thereby enhancing the economic value of creative works and providing creators with greater access to financial resources.¹⁹

Despite the notable advantages of Indonesia's Law Number 28 of 2014 on copyright, several weaknesses remain in its implementation. First, law enforcement and implementation remains weak²⁰. Although the law imposes strict sanctions for copyright infringement, its enforcement is hampered by low public legal awareness, inadequate oversight, and a limited institutional capacity to address violations effectively.²¹ Second, this law has not been effective in curbing digital piracy. Despite addressing digital content protection, piracy rates in Indonesia remain high, with illegal websites still widely accessible and takedown mechanisms proving to be largely ineffective.²² Third, there is an imbalance between the rights of creators and users. While the law strongly protects creators' rights, it offers limited accommodation for user rights, especially for fair use. Article 43 outlines certain exceptions to educational and research purposes, but its vague interpretation continues to generate inconsistencies in its application.²³ Fourth, licensing and copyright management issues persist. Although the law permits creators to assign economic rights to collective management organizations, the current system lacks transparency and efficiency in royalty distribution (Hidayat, 2022). Finally, the lack of harmonization with international regulations remains a challenge. Despite Indonesia's ratification of

¹⁹ Imas Rosidawati Wiradirja et al., "Legal Problematics in the Execution of Copyrights as Fiduciary Collateral in the Indonesian Law," *International Journal of Criminal Justice Sciences* 16, no. 2 (2021): 13–23.

²⁰ One concrete example that reflects the implementation of this problem is the case of Agnez Mo, which was widely discussed due to alleged copyright infringement of her musical works which were used without permission on various digital platforms and entertainment events, both domestically and internationally. Meanwhile, more than 40% of publishers who are members of IKAPI have experienced financial losses due to the circulation of pirated books. This phenomenon highlights the gap between normative protection and the effectiveness of substantive law in protecting the economic and moral rights of authors. Read;

<https://www.ikapi.org/2023/05/20/pembajakan-buku-membunuh-kreativitas/#>

²¹ T. Siregar, *Fatwa MUI Dan Implikasinya Terhadap Perlindungan Hak Cipta Di Indonesia*. (Medan: Pustaka Hukum Islam, 2021).

²² Muhammed Atiqur Rahman, "Designing Copyright Laws to Combat Digital Piracy and Effectively Balance Proprietary and Public Interests in Bangladesh." (Macquarie University, 2022).

²³ Ismail, Z. *Perlindungan Hak Cipta Dan Konsep Fair Use Dalam Islam*. Bandung: Graha Ilmu, 2020.

several international copyright treaties, aspects of the 2014 law are still not fully aligned with global standards, such as the Digital Millennium Copyright Act (DMCA), which is widely implemented in other jurisdictions.²⁴

Law Number 28 of 2014 on copyright represents a significant advancement in the protection of intellectual property rights in Indonesia. It introduced substantial improvements, including the expansion of copyright coverage, extension of protection duration, imposition of stricter sanctions, and recognition of copyright as a fiduciary asset. However, several weaknesses remain that require further attention, particularly in the areas of legal implementation, imbalance between the rights of creators and users, and lack of harmonization with international regulations. To ensure that copyright protection in Indonesia is more effective and sustainable, it is essential to strengthen law enforcement mechanisms, enhance public awareness, and align domestic regulations with global standards.

2.2 The Legal and Ethical Dimensions of Copyright in the Fatwa of the Indonesian Council of Ulama

Copyright is a component of intellectual property rights that receives particular attention within Islamic law. In the Indonesian context, the Indonesian Council of Ulama (*Majelis Ulama Indonesia*, MUI) issued Fatwa No. 1 of 2003 on copyright, which affirms that copyright is a legitimate form of ownership that must be legally protected (MUI, 2005). This fatwa aims to provide legal clarity for Muslims in dealing with copyright in accordance with the Sharia principles. It establishes that copyright falls under the category of legitimate property rights (*al-huqūq māliyah*) in Islam, grounded in the Islamic legal principle that individual ownership must be respected, and inappropriate appropriation is strictly prohibited. The Qur'an clearly states, '*Do not consume one another's wealth unjustly*' (Al-Baqarah [2]: 188). Although the MUI's fatwa on copyright provides a strong ethical and legal foundation from an Islamic perspective by affirming that copyright is a moral mandate and a form of social justice, its implementation in Indonesia still faces challenges, especially in its integration with Law No. 28 of 2014 and low public awareness. The case of Agnez Mo, who sang someone else's song without permission shows the weak enforcement of the law and an ethical understanding of intellectual property rights. Meanwhile, IKAPI data that records the rampant book piracy confirms that similar violations are also widespread in the publishing sector. These two cases illustrate that copyright protection in Indonesia is not only a matter of positive legal weaknesses, but also a lack of

²⁴ Putra, Dedisyah, Asrul Hamid, and Martua Nasution. "Metodologi Maqashid Al-Syari'ah Jasser Auda Sebagai Pendekatan Baru Sistem Hukum Islam." *Al-Syakhsiyah: Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 4, no. 1 (2022): 95.

internalization of Islamic moral values of honesty, justice, and respect for the work of others.

The unauthorized use or piracy of copyrighted materials is regarded as a prohibited act in Islam (MUI, 2005). The Indonesian Council of Ulama (MUI) Fatwa No. 1/MUNAS/MUI/5/2005 on the Protection of Intellectual Property Rights and Fatwa No. 1/2003 not only affirms the legitimacy of copyright but also provides a strong theological foundation for its enforcement in Indonesia.²⁵ Prior to the issuance of these fatwas, some Muslim communities questioned the legal status of copyright under Islamic law. With their promulgation, government authorities and legal institutions have acquired religious legitimacy to uphold and protect copyright. Any form of unauthorized use, disclosure, production, commercialization, import, export, distribution, reproduction, plagiarism, falsification, or piracy of copyrighted works is explicitly defined as an act of injustice (*zulm*) and therefore prohibited (*harām*) within the framework of Islamic law.²⁶

Furthermore, the fatwa plays a critical role in raising public awareness within the Indonesian Muslim community, especially in shaping attitudes toward respecting intellectual property in the creative and Islamic publishing industries.²⁷ It is also aligned with the objectives of Islamic law (*maqāṣid al-shari‘a*), particularly in the protection of wealth (*hifz al-māl*), as it safeguards the economic rights of creators, prevents unjust exploitation, and ensures their welfare.²⁸ Additionally, fatwa facilitates the adaptation of Islamic legal principles to contemporary technological developments. In the digital era, where piracy is increasingly accessible, this religious guidance offers a practical direction for Muslims to protect digital content such as e-books, music, and software, including emerging forms of intellectual property such as AI-generated artworks, blockchain-authenticated ownership (e.g., NFTs) and smart contracts, all of which raise new questions regarding authorship, ownership (*milkiyyah*), and permissible commercial use.²⁹

Despite its normative and theological significance, the MUI fatwa on copyright has several notable limitations. First, it lacks binding legal authority within Indonesia's national legal system. Although the fatwa carries moral and religious

²⁵ Arjana and Kurniawan, "Legal Protection Of Copyright Regulations For Religious-Based Works: A Legal And Morality Review By Ronald Dworkin."

²⁶ F. Basir and A. Syatar, "Pelanggaran Hak Cipta Dalam Konten Video YouTube: Perspektif Fikih Jinayah," *Shautuna: Jurnal Ilmiah Mahasiswa Perbandingan Mazhab* 4, no. 3 (2023): 939–953, <https://doi.org/10.24252/shautuna.v4i3.35714>.

²⁷ Meirison, Meirison, and Zerly Nazar. "Intellectual property rights and monopoly in the perspective of Islamic jurisprudence." *Al-Ahkam* 31.1 (2021): 49–68.

²⁸ Muhammad at-Tahir bin A' Ashur. *Maqāṣid asy-Syari'ah al-Islāmiyah*, cet. 2, tahlīk Muhammad at-Tāhir al-Misāwiyy. Jordania: Dār an-Nafā'is, 1421H/2001.

²⁹ Rahman, *Hak Cipta Dalam Perspektif Islam Dan Hukum Positif*.

weight, it does not possess the force of law, making its effectiveness dependent on individual awareness and voluntary compliance, which limits its impact on curbing widespread copyright violations.³⁰ Second, there is insufficient dissemination and implementation of fatwa within the society. Many individuals remain unaware of its content, largely because of the lack of proactive outreach by relevant institutions, including the government and Islamic educational bodies. Third, fatwa does not provide a concrete enforcement mechanism. Unlike Indonesia's positive law, which clearly outlines civil and criminal sanctions for copyright infringement, fatwa remains normative and lacks procedural guidance for enforcement, thereby limiting its legal relevance.³¹ Fourth, the fatwa does not accommodate the principle of fair use, a concept recognized in both international copyright law and Indonesian copyright legislation that allows the limited use of copyrighted materials for educational and research purposes. The absence of such provisions in the fatwa may hinder access to knowledge for scientific and public benefit.³² Finally, the fatwa fails to comprehensively address challenges in the digital age.³³ including the proliferation of pirated content online, copyright issues on digital platforms, and questions of ownership in emerging technologies such as blockchain. These shortcomings highlight the need for a revised or supplementary fatwa that is better aligned with contemporary legal, technological, and social development.

The fatwa issued by the Indonesian Council of Ulama (MUI) on copyright plays a significant role in affirming copyright as a legitimate form of ownership (*milkiyyah*) within the framework of Islamic law. It provides a religious foundation for the protection of creators' economic rights, supports the enforcement of copyright regulations, and promotes greater awareness of the importance of respecting intellectual property among Muslim communities. However, from an epistemological standpoint, this fatwa has not been uniformly accepted; its practical implementation in diverse social contexts, especially among pesantren communities, digital Muslim creatives, and informal publishers, reveals varying degrees of reception. Some actors embrace it as an ethical guideline that aligns religious obligations with legal norms, while others view it with skepticism, particularly when legal enforcement is seen as favoring commercial elites or when creative works are framed as public religious knowledge rather than as private intellectual assets. This divergence highlights the

³⁰ Siregar, *Fatwa MUI Dan Implikasinya Terhadap Perlindungan Hak Cipta Di Indonesia*.

³¹ Putra, Dedisyah, Asrul Hamid, and Martua Nasution. "Metodologi Maqashid Al-Syari'ah Jasser Auda Sebagai Pendekatan Baru Sistem Hukum Islam."

³² Z. Ismail, *Perlindungan Hak Cipta Dan Konsep Fair Use Dalam Islam* (Bandung: Graha Ilmu, 2020).

³³ Khasani, Fahim. "Fatwa phenomenon in the digital age; from concept analysis to problem solving." *Al-Adalah: Jurnal Syariah dan Hukum Islam* 7.1 (2022): 70-87.

need for an ongoing ijtihad, which is both normatively grounded and socially responsive.

Status pengetahuan hukum yang terkandung dalam fatwa dan bagaimana otoritas epistemiknya bekerja dalam konteks sosial dan teknologi modern. Fatwa tentang hak cipta, yang berlandaskan pada *maqāṣid al-sharī'a* khususnya prinsip *hifz al-māl* (perlindungan harta), merepresentasikan usaha epistemik untuk menerjemahkan nilai-nilai normatif Islam ke dalam kerangka hukum kontemporer.³⁴ Ia menjadi bentuk pengetahuan normatif yang berfungsi menjembatani tradisi hukum Islam klasik dengan realitas baru yang ditandai oleh digitalisasi karya dan transformasi kepemilikan intelektual. Namun, dari sudut epistemologi hukum Islam, fatwa ini menghadapi masalah validitas dan otoritas epistemik, karena pengetahuannya bersifat *non-binding* dan tidak memiliki kekuatan koersif di dalam sistem hukum nasional. Ketiadaan mekanisme implementasi dan keterbatasan sosialisasi publik menunjukkan bahwa pengetahuan normatif yang dihasilkan belum sepenuhnya menjadi pengetahuan sosial yang diinternalisasi, atau dalam istilah epistemologi Islam – belum mencapai derajat *'ilm al-'amalī* (pengetahuan yang berbuah tindakan).³⁵ Tantangan tersebut menunjukkan adanya kesenjangan epistemik antara produksi pengetahuan hukum (fatwa) dan penerapannya dalam praksis sosial-hukum digital. Oleh karena itu, secara epistemologis, penguatan fatwa ini menuntut integrasi antara epistemologi normatif Islam dengan epistemologi legal-modern agar nilai-nilai *maqāṣid* tidak berhenti pada tataran wacana, tetapi dapat membentuk *epistemic authority* yang efektif dalam tata kelola hukum hak cipta di era digital.

2.3 Reconceptualizing Copyright through the Lens of Islamic Property Rights (*al-Huqūq Māliyah*)

In Islamic law, individual rights are classified into several categories, including *al-huqūq māliyah* (property or financial rights). *Huqūq al-māliyah* refers to ownership rights that possess economic value and can be utilized in financial transactions. According to Wahbah al-Zuhaylī (2011, p. 315), *al-huqūq māliyah* encompasses all forms of ownership that carry utility and exchange values within the framework of the Islamic economic system. Broadly speaking, Islamic jurisprudence classifies individual rights into two main types: *al-huqūq māliyah* (proprietary rights) and *al-huqūq adabiyah* (moral rights). While *al-huqūq māliyah* pertains to transferable economic

³⁴ Inayati, Anindya Aryu. "Epistemologi Epistemologi Hukum Islam Sir Muhammad Iqbal: Kajian Filosofis Hukum Islam." *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum dan Syariah* 10.1 (2021): 38-50.

³⁵ Inayati, Anindya Aryu, and Agung Barok Pratama. "Epistemology in Islam: The Integration of Science and Religion According to Kuntowijoyo and Its Correlation with the National Law Establishment." *Tasfiyah: Jurnal Pemikiran Islam* 6.1 (2022): 65-82.

rights that may be sold, inherited, or otherwise legally transacted in accordance with Sharia principles, *al-huqūq adabiyah* involves nonmaterial rights related to the integrity and attribution of a work. The concept of *al-huqūq māliyah* is closely linked to the notion of *milk* (ownership), which signifies a person's legitimate right to use and benefit from a property or object in a manner sanctioned by Islamic law.³⁶

The concept of *al-huqūq māliyah* (proprietary rights) is closely related to the notion of *milk* (ownership), which in Islamic jurisprudence refers to an individual's legitimate right to use or benefit from something, in accordance with Sharia. The Qur'an explicitly recognizes the legitimacy of private ownership and provides protection for individuals' economic rights. This is affirmed in the verse: "And do not consume one another's wealth unjustly..." (Qur'an, Al-Baqarah [2]: 188), which serves as a foundational principle in Islamic economic ethics, prohibits unlawful appropriation, and emphasizes the sanctity of individual property rights.

This verse indicates that Islam recognizes property ownership and prohibits confiscation or unauthorized use. Therefore, copyright, which provides economic benefits to its owner, can be classified as part of *al-huqūq al-māliyah* (proprietary rights) as it fulfills the criteria of lawful ownership in Islam.³⁷

According to Wahbah Az-Zuhaili,³⁸ *al-huqūq al-māliyah* encompasses all forms of ownership that can generate benefits and possess exchangeable values. In Islamic law, sources of ownership may arise from individual effort, lawful transactions, inheritance, gifts, or other forms of acquisition that comply with the Sharia principles. Consequently, in the development of contemporary Islamic jurisprudence, various rights that were previously not considered tangible property, such as intellectual property rights, have increasingly been recognized as part of *al-huqūq al-māliyah*.

Classical scholars such as Al-Sarakhsī,³⁹ in *Al-Mabsuth* emphasized that ownership in Islam is not limited to tangible objects but also includes *manfa'ah* (usufruct or benefit), which can be subject to commercial transactions. This view is reinforced by Ibn Qayyim al-Jawziyyah,⁴⁰ who states that Islam acknowledges all forms of economic rights that possess utility and exchange value within lawful transactions.

2.3.1 Copyright and the Islamic Concept of *Al-Huqūq al-Māliyah*

³⁶ Anindya Aryu Inayati, "Epistemologi Hukum Islam Sir Muhammad Iqbal: Kajian Filosofis Hukum Islam," *Ulumul Syar'i: Jurnal Ilmu-Ilmu Hukum Dan Syariah* 10, no. 1 (2021): 38–50.

³⁷ Rahman, *Hak Cipta Dalam Perspektif Islam Dan Hukum Positif*.

³⁸ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islamiy wa Adillatuhu*, Damaskus: Daru al-Fikri, 1985

³⁹ Muhammad ibn Ahmad al-Sarakhsī, *Kitab al-Mabsut*, Dar al-Ma'arifah, 1993.

⁴⁰ Ibnu Qayyim Al Jauziyah, *I'lām al-Muwaqqi'in 'an Rabb al-Alamin*, Beirut: Dar al-Jail, 2002.

Copyright is an exclusive right granted to a creator over an intellectual work.⁴¹ From an economic standpoint, it allows the owner to derive financial benefits through royalties, licensing, or the sale of intellectual property rights (Susanti 2018). 56). In light of the criteria established under *al-ḥuqūq al-māliyah*, copyright qualifies as a legitimate form of ownership under Islamic law for several reasons. First, it holds economic value and functions as a source of income for the creator. Second, it is transferable as the copyright holder can license or assign rights to others, aligning with the Islamic legal principle of *intiqāl* (transfer of ownership). Third, it is inheritable, meaning that it can be passed down to heirs, just like other economically valuable assets. Finally, copyright is tradable, allowing it to be bought and sold through licensing agreements or full-ownership transfers, further reinforcing its status as a form of property within the framework of Islamic legal and economic thought. From the perspective of *maqāṣid al-shari‘a* (the objectives of Islamic law), the recognition of copyright as part of *al-ḥuqūq al-māliyah* serves to protect wealth (*hifz al-mal*), prevent exploitation, and promote innovation within Islamic society.⁴²

Accordingly, copyright can be categorized as *al-ḥuqūq al-māliyah* in Islam, as it fulfills the criteria of ownership by possessing economic value and being transferable, inheritable, and tradable. This concept aligns with the principles of Islamic law that safeguards individual property rights and supports Sharia-compliant economic development. Therefore, copyright regulation within the Islamic legal system should be strengthened to remain relevant in the context of technological and global economic advancements.

Darmawati's study reveals the emergence of various movements that reacted to the evolution of copyright law.⁴³ Broadly speaking, these responses can be categorized into two main streams: the anti-copyright movement and those advocating copyright reform. Drawing on examples such as Sci-Hub, Libgen, the Access to Knowledge (A2K) movement, and several experiences of the Muslim world. There is fundamental tension between the commercial interests of publishers and the academic pursuit of open access, making it difficult to reconcile both sides. While existing copyright regulations tend to support dominant power structures, they often fail to address legal issues related to academic and nonprofit contexts. Additionally, Islamic legal perspectives on copyright present a form of ambivalence – on the one

⁴¹ K. Varaprasada Rao and Sandeep Kumar Panda, "A Design Model of Copyright Protection System Based on Distributed Ledger Technology," in *Computer Communication, Networking and IoT: Proceedings of 5th ICICC, Volume 2*. (Singapore: Springer Nature Singapore, 2022), 127-141.

⁴² Rahman, *Hak Cipta Dalam Perspektif Islam Dan Hukum Positif*.

⁴³ Darmawati Darmawati, "Islamic Law and Copyright In Academic World: The Dynamic Debates between Privatization and Distribution of Knowledge," *Mazahib Jurnal Pemikiran Hukum Islam* 17, no. 1 (2018): 23–45, <https://doi.org/10.21093/mj.v17i1.948>.

hand, promoting the free circulation of knowledge, but on the other, constrained by the need to comply with intellectual property norms.

From an Islamic perspective, the issue of copyright reveals complex historical and normative dynamics. In classical Islamic literature, copyright is not explicitly discussed, but its value can be traced back to the Qur'an, hadith, and scholarly practices such as *sanad* in hadith transmission, which reflect respect for intellectual property rights. The case of Imam Suyuthi, who experienced plagiarism during the Abbasid era, also serves as evidence that copyright infringement had existed for a long time, even though there were no specific regulations at the time. Contemporary scholars, such as Wahbah Zuhaili, later affirmed that copyright falls under the category of *haqq al-ta'lif*, which is protected by Islamic law, and thus any violation of it is considered a sin. However, ambivalence exists when copyright is linked to the dissemination of religious knowledge, which is considered charity and a moral obligation to be shared. In the modern context, Muslim countries began to formulate copyright regulations, starting with Egypt in 1939, followed by the Gulf countries in the 1990s. Indonesia, as the country with the largest Muslim population, regulates copyright through Law No. 28 of 2014, which was the result of a long reform process since the colonial era, supplemented by a fatwa from the Indonesian Ulema Council (MUI), affirming copyright as *al-huqūq māliyah* protected by Islam. However, this fatwa is not binding but serves as moral legitimacy, illustrating the relationship between the state and religion in strengthening protection for intellectual works in Indonesia.⁴⁴

2.3.2 Copyright and the Islamic Concept of *Al-Huqūq al-Māliyah*

In Islam, the protection of individual property rights is firmly grounded in both the Qur'an and the Hadith.⁴⁵ Copyright, as a component of *al-huqūq al-māliyah* (property rights), is recognized as a legitimate right because of its economic value and the benefit it provides to its owner. The Qur'an explicitly prohibits the unlawful appropriation of others' properties, as stated in the verse:

"And do not consume one another's wealth unjustly or send it [in bribery] to the rulers in order that [they might aid] you to consume a portion of the wealth of others wrongfully – while you know [it is unlawful]." (Qur'an, Al-Baqarah [2], 188).

⁴⁴ Darmawati.

⁴⁵ Hari Sutra Disemadi et al., "Revitalizing Intellectual Property Rights in Indonesia: A Maqasid Al-Sharia Perspective on Communal Ownership," *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 625–48.

This verse underscores the ethical foundation for safeguarding intellectual property in Islam, affirming that any form of unjust enrichment, including the unauthorized use of copyrighted works, is contrary to Islamic principles.

In the context of copyright, piracy, or the unauthorized use of a creative work, falls under the category of unlawfully taking the rights of others. The Prophet Muhammad (peace be upon him) also emphasized the principle of property protection in his Hadith:

"The property of a Muslim is not lawful [to be taken] except with their willing consent"
(Musnad Ahmad, no. 20172).⁴⁶

This Hadith provides a clear foundation that no one may take or use what rightfully belongs to another without permission. Accordingly, copyright as a form of *al-ḥuqūq al-māliyah* must be respected and protected under Islamic law.

Several contemporary scholars have expressed their views on the status of copyrights in Islam. Yusuf al-Qaradawi, in his book *Fiqh al-Mu ‘āmalāt al-Mu ‘āṣirah*, affirms that intellectual property rights, including copyright, constitute a form of wealth (*māl*) with economic value and must be protected based on the principles of justice in Islam. Similarly, the Islamic Fiqh Academy (*Majma‘ al-Fiqh al-Islāmī*), in its 1988 session, issued a fatwa affirming that intellectual property rights, including copyright, are legally recognized in Islam and must not be taken or used without the owner's permission.⁴⁷ This fatwa underscores that copyright carries economic value, is transferable and inheritable, and, therefore, deserves legal protection. According to Wahbah al-Zuhaili, copyright shares similar characteristics with other forms of property as it can be utilized, sold, and inherited.⁴⁸ Consequently, under Islamic law, copyright should be granted the same level of protection as other forms of property.

Maqāṣid al-shari‘a, as the overarching objective of Islamic law, encompasses several key principles that support the protection of copyright. One of its primary

⁴⁶ Hadith History of Ahmad, No. 20172 was mentioned by Imam Ad-Daraquthni in his Sunan. Read; *Sunan al-Daruqutni*, Juz V (Cet. I; Lebanon: Mu'assasah al-Risālah, 1424 AH/ 2004 AD.), p. These 30 hadiths show that in Islam, ownership of property is highly respected. It is not permitted to take or use other people's property except with their permission and willingness.

⁴⁷ Ahmed Gad Makhlof, The Doctrinal Development of Contemporary Islamic Law: Fiqh Academies as an Institutional Framework, *Oxford Journal of Law and Religion*, Volume 10, Issue 3, October 2021, Pages 464-486, <https://doi.org/10.1093/ojlr/rwac005>

⁴⁸ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islamiy wa Adillatuhu*.

aims is to preserve wealth (*hifz-al-mal*).⁴⁹ Copyright as a form of *al-huqūq al-māliyah* (property rights) falls under this protection because of its significant economic value to its creator.⁵⁰ According to Ibn 'Ashur,⁵¹ the objectives of Shariah seek to promote social justice and safeguard individual rights to contribute to the overall welfare of society. In the context of copyright, legal protection of intellectual works serves the following purposes: (1) safeguarding individual ownership rights, ensuring that creators receive economic benefits from their intellectual contributions; (2) preventing exploitation, protecting against unauthorized use or infringement by parties who are not entitled to the work; and (3) promoting innovation and creativity – encouraging individuals to continue producing works that advance knowledge and the arts within the community.

Thus, the protection of copyright aligns with the objectives of *maqāṣid al-shari'a*, as it promotes economic justice, safeguards individual rights, and prevents actions that may harm society. Based on evidence from the Qur'an and Hadith, scholarly opinions, and *maqāṣid al-shari'a* analysis, it can be concluded that copyright in Islam is classified as a form of *al-huqūq al-māliyah* that must be protected. The Qur'an and Hadith explicitly prohibit the unlawful appropriation of others' rights, while contemporary scholars such as Yusuf al-Qaradawi and institutions like the Islamic Fiqh Academy (*Majma' al-Fiqh al-Islami*) have affirmed the recognition of copyright as a form of property (*mal*). Furthermore, *maqāṣid al-shari'a* underscores the necessity of protecting copyrights to ensure the well-being of both individuals and society as a whole.

2.3.3 The Legal and Economic Consequences of Recognizing Copyright as Islamic Property Rights (*Al-Huqūq al-Māliyah*)

Figure 1 shows the conceptual framework for recognizing copyright as *al-huqūq al-māliyah* in Islamic law, illustrating the relationship between modern copyright doctrine, fatwa-based legitimacy, and *fiqh al-mu'āmalāt* principles.

⁴⁹ Dedisyah Putra, Asrul Hamid, and Martua Nasution, "Metodologi Maqashid Al-Syari'ah Jasser Auda Sebagai Pendekatan Baru Sistem Hukum Islam," *Al-Syakhshiyah: Jurnal Hukum Keluarga Islam Dan Kemanusiaan* 4, no. 1 (2022): 95.

⁵⁰ Anindya Aryu Inayati, Muhammad Fazlur Rahman, and Hairus Saleh, "Epistemic Values of Islamic Law in Green Financing Contracts," *Adzkiya : Jurnal Hukum Dan Ekonomi Syariah*, 12, no. 2 (2024): 12-21, <https://doi.org/10.32332/h73s3z73>.

⁵¹ Muhammad at-Tahir bin A'ashur. *Maqāṣid asy-Syari'ah al-Islāmiyah..*

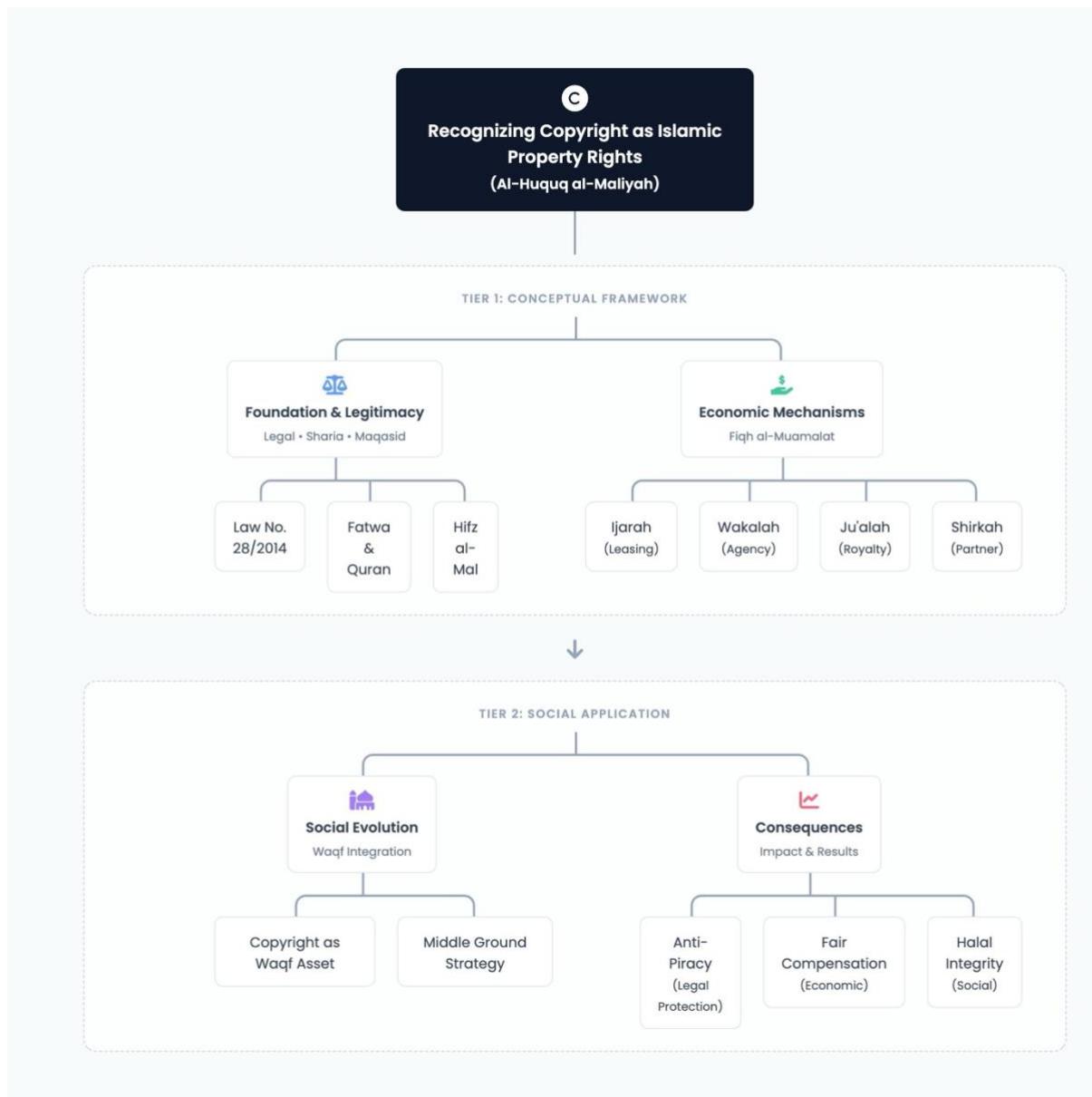


Figure 1. copyright as al-huqūq al-māliyah in Islamic law

In modern legal systems, copyright is recognized as an exclusive right held by creators over their work.⁵² The legal protection of copyright has been established through various national legislations, including Indonesia's Law No. 28 of 2014 on copyright. Although classical Islamic legal literature does not explicitly address copyright, numerous contemporary fatwas and scholarly opinions have affirmed that copyright constitutes a form of *al-huqūq al-māliyah* (property rights) that must be protected. A fatwa issued by the Islamic Fiqh Academy (*Majma' al-Fiqh al-Islami*) in 1988 confirmed that intellectual property rights, including copyright, are legitimate and recognized in Islam and must not be taken or used without the owner's permission. Therefore, a

⁵² Tehila Rozencwaig-Feldman, "The Author and the Other: Reexamining the Doctrine of Joint Authorship in Copyright Law," *Fordham Intell. Prop. Media & Ent. LJ* 32 (2021): 172.

Sharia-based regulatory framework is needed – one that not only accommodates the protection of copyright, but also ensures that the concept aligns with the principles of *fiqh al-mu'amalāt* (Islamic commercial jurisprudence).⁵³

In Islamic law, the protection of copyright can be grounded in the Qur'anic verse: "And do not consume one another's wealth unjustly..." (Qur'an, Al-Baqarah [2], 188). This verse implies that a person's property, including copyright, must not be taken unlawfully. A Sharia-based regulatory framework should therefore accommodate copyright protection while upholding the principles of justice and public welfare (*maslahah 'ammah*).⁵⁴

The reconstruction of copyright as *al-huqūq al-māliyah* has significant implications for the application of various Islamic contracts, particularly in the creative and publishing industries. Several types of contracts relevant to copyright from a Shariah perspective include: Ijarah contracts (leasing of creative services), whereby copyright can be protected through an agreement in which the creator grants usage rights to another party in exchange for compensation⁵⁵ and *Wakalah bil Ujrah* (paid agency), in which a creator may appoint an agent or distributor – especially in digital content publishing and distribution – on a commission basis, following the principles of *wakalah bil ujrah*. The application of these contracts illustrates that copyright may serve as a legitimate object of economic transactions in Islam and, as such, deserves legal protection equivalent to other recognized forms of property ownership.

Islamic economics views the recognition of copyright as *al-huqūq al-māliyah*, a key factor in driving innovation and boosting productivity within the creative sector. A crucial component of this perspective is the concepts of royalties and licensing. In *fiqh al-mu'amalāt*, royalty payments are akin to *ju'ālah* – a reward-based contract in which an individual is compensated for the benefits generated by their intellectual work (al-Zuhaili, 2011). Likewise, copyright licensing can be framed within the concept of *shirkah* (partnership), in which the copyright owner and another party jointly benefit from the commercial use of intellectual property.⁵⁶

The recognition of copyright in Islam also serves to prevent the unauthorized exploitation of intellectual works, as emphasized in the Hadith of the Prophet Muhammad (peace be upon him): "The property of a Muslim is not lawful [to be taken] except with their willing consent". Accordingly, strengthening copyright regulations within the framework of the Islamic economic system would enhance the welfare of

⁵³ Wahbah Az-Zuhaili, *Al-Fiqh Al-Islamiy wa Adillatuh*.

⁵⁴ Muhammad at-Tahir bin A' Ashur. *Maqāṣid asy-Syari'ah al-Islāmiyah*.

⁵⁵ Rahman, *Hak Cipta Dalam Perspektif Islam Dan Hukum Positif*.

⁵⁶ Rahman.

creative industry actors while preventing piracy and copyright violations that harm both creators and broader society.⁵⁷

The reconstruction of copyright as *al-huqūq al-māliyah* has significant legal and economic implications in Islamic law.⁵⁸ Without adequate protection, sectors central to Muslim socio-economic life—such as halal media, Islamic education platforms, and digital preaching (*da'wah*)—are vulnerable to rampant piracy and unauthorized content distribution. This not only results in direct financial losses for Muslim creators, educators, and entrepreneurs but also undermines the quality and sustainability of Islamic knowledge dissemination. In the halal industry, for instance, weak copyright enforcement can hinder the production of culturally relevant content, whereas in Islamic educational institutions, the unauthorized circulation of textbooks and learning materials threatens both pedagogical integrity and institutional viability. Similarly, the exploitation of digital *da'wah* materials without consent compromises the credibility of religious messages and disincentivises scholarly innovation. Thus, redefining copyright through the lens of Islamic property rights is not merely a doctrinal reform, but a strategic effort to safeguard the economic dignity and cultural agency of Muslim communities in the digital era.⁵⁹

A *Sharia*-based regulatory framework that accommodates copyright is essential to protect the rights of creators in line with the objectives of *maqāṣid al-shari'a*, particularly *hifz al-mal* (protection of wealth). In the context of Islamic business, copyright can be incorporated into various contractual forms, such as *ijarah* and *wakalah bil ujrah*, contributing to the development of a *Sharia*-compliant creative industry. From an Islamic economic perspective, recognizing copyright as *al-huqūq al-māliyah* enables the implementation of royalty and licensing systems within *fiqh al-mu'amalāt*, thereby ensuring equitable economic benefits for both creators and society at large.⁶⁰

Intellectual Property Rights (IPRs), including copyright, may qualify as waqf assets as they possess economic value, are recognized under positive law, and are permissible within *Sharia*. The classical paradigm that confines waqf to immovable property has gradually evolved toward a broader understanding of its social function, allowing intangible assets, such as copyright, to be designated as waqf, provided that they meet the necessary requirements. This position was reinforced by Indonesian

⁵⁷ Bismi Khalidin, "Economic Empowerment with Islamic Economics-Based Instruments," *American Journal of Humanities and Social Sciences Research* 7, no. 3 (2024): 18–27.

⁵⁸ Julie Lowe, "Hanafi Approaches to Copyright," *Islamic Law and Society* 30, no. 3 (2022): 249–75.

⁵⁹ Tabrez Y Ebrahim, "Islamic Intellectual Property," *Seton Hall L. Rev.* 54 (2023): 991.

⁶⁰ Aang Asari et al., "Theory of Rights in Islamic Economic Law and Its Relation to Intellectual Property Rights," *Al-Iktisab: Journal of Islamic Economic Law* 6, no. 2 (2022): 169–88.

Ulema Council (MUI) Fatwa No. 1/MUNAS/VII/5/2005 and national regulations, notably Law No. 41 of 2004 on Waqf, which granted legitimacy to the use of IPRs as waqf properties. Accordingly, copyright as waqf not only contributes to the preservation of knowledge and creativity, but also opens new opportunities for the management of social assets for the welfare of the community, situating it within contemporary discourse that bridges Islamic law, the creative economy, and societal empowerment. Nevertheless, an epistemological dilemma emerges: Should copyright be regarded as knowledge that must be freely disseminated for the greater benefit of the ummah, or as a form of commercial property that may be utilized in a limited manner for economic purposes? In this regard, endowing copyright as waqf offers compelling middle ground. It enables copyright to remain accessible as a form of knowledge for public benefit while simultaneously positioning it as an economic asset that can be managed to advance social welfare and collective prosperity.⁶¹

CONCLUSION

The reconstruction of copyright as *al-huqūq al-mālīyah* in Islamic law provides a Sharia-based foundation for protecting intellectual property as a legitimate form of wealth, in line with the principle of *hifz al-māl* within *maqāṣid al-shari‘a*. Supported by Qur’anic injunctions, prophetic traditions, and contemporary fatwas, this concept legitimizes the use of contracts such as *ijārah* and *wakālah bi al-ujrah* in creative industries. This research provides a conceptual framework that combines classical jurisprudence and contemporary challenges within a unified Sharia legal structure regarding copyright, particularly in the digital age. Further research is recommended to empirically investigate the impact of weak copyright protection on Muslim creators and explore how Islamic legal principles can respond to emerging challenges such as NFTs, AI-generated content, and blockchain-based ownership.

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Authorship and Level of Contribution

Tarmidzi, M.S.I. is responsible for the initial conception, formulation of the main idea, research design, data collection, analysis, and interpretation of the findings in this

⁶¹ S. Sukiaty et al., “Copyright as a Waqf Object in the Context of Fiqh and Positive Law,” *Al-Istinbath: Jurnal Hukum Islam*, 8, no. 1 (2023): 269–290.

scientific work. He also wrote the main draft of the manuscript and ensured academic integrity and adherence to the principles of research ethics. Anindya Aryu Inayati, M.P.I acts as a partner for scientific discussion who provides substantive input, sharpens arguments, and assists in the manuscript revision process to strengthen coherence and sharpness of analysis. Meanwhile, Muhammad Asro, M.H and Jumailah, M.S.I played a role in providing critical input, conceptual insights, and feedback during the entire research process. Thus, all content, conclusions, and final interpretations in this work are entirely the responsibility of the author.

Author Bionote

Tarmidzi is a professional lecturer at the State Islamic University of K.H. Abdurrahman Wahid Pekalongan. His scientific and field of expertise focuses on the Halal Tourism Industry and Sharia Economic Law. He is a graduate of STAIN Pekalongan (2005) from the *Ahwāl al-Syakhsiyah* program with a final project research entitled Copyright Law No. 19 of 2002 in the Perspective of Islamic Law. S2 education was pursued at the Postgraduate University of the Islamic University of Indonesia in the Master Program in Islamic Studies with a concentration in Islamic Economics, with a thesis entitled Implementation of PNPM Mandiri in Poverty Alleviation from an Islamic Economic Perspective (2011). In his academic track record, Tarmidzi is active in writing in the fields of sharia economic law, sharia compliance of financial institutions, production ethics, halal certification, and community economic empowerment. His publications include articles in *Hikmatuna*, *Jurnal Abdimas Economics Business*, *Islamic Banking*, and various scientific proceedings. In addition, he has also written a number of books, such as *Problematics of Sharia Cooperative Management* (2025) and *Harmonization of KHES, POJK, and Fatwa DSN-MUI* (2024). His work reflects a significant contribution to the development of sharia regulations, halal economics, and strengthening Islamic economic law literacy in Indonesia.

BIBLIOGRAPHY

Anggraini, Pingkan. "Penjelasan Armand Maulana soal Viral Gerakan Vibrasi Suara Indonesia." *DetikHot*. Accessed December 30, 2025. <https://tinyurl.com/bdz4r4b9>

Asari, Aang, et al. "Analysis of IPR According to the DSN MUI Fatwa and Islamic Economy." *Al-Iktisab: Journal of Islamic Economic Law* 6, no. 2 (2022): 111–120. <https://scholar.google.com/scholar?q=Analysis+of+IPR+According+to+the+DSN+MUI+Fatwa+and+Islamic+Economy+Al-Iktisab+2022>

Basir, Khaerul, and Abdul Syatar. "KH. Muhammad Tahir Azhary's View of the Dignity of Copyright and Intellectual Property Rights." *Nurani: Jurnal Kajian Syari'ah dan Masyarakat* 23, no. 2 (2023): 409–426. <https://doi.org/10.19109/nurani.v23i2.20057>

Darma Kartian, Doing Muhammad, and Muhammad Irsyadul Ibad. "Legal Protection for Copyright of Songs and Music in Indonesia." *Journal Equity of Law and Governance* 5, no. 1 (2024): 113–122. <https://doi.org/10.55637/elg.5.1.10260.113-122>

Darmawati. "Hak Cipta Dalam Perspektif Syariat Islam." *Mazahib: Jurnal Pemikiran Hukum Islam* 17, no. 2 (2018): 205–224. <https://doi.org/10.21093/mj.v17i2.990>

Disemadi, Hari Sutra, et al. "Revitalizing Intellectual Property Rights in Indonesia: A Study on the Philosophical Foundation of Islamic Law." *Al-Istinbath: Jurnal Hukum Islam* 9, no. 2 (2024): 583–604. <https://doi.org/10.29240/jhi.v9i2.10527>

Ebrahim, Tabrez Y. "Copyright in Islamic Law." *Seton Hall Law Review* 53, no. 4 (2023): 1153–1204. <https://scholarship.shu.edu/shlr/vol53/iss4/6>

Ibn 'Āshūr, Muhammad al-Ṭāhir. *Maqāṣid al-Sharī'ah as Philosophy of Islamic Law: A Systems Approach*. Translated by Mohamed El-Tahir El-Mesawi. London/Washington, DC: International Institute of Islamic Thought, 2006. <https://www.worldcat.org/search?q=Maqasid+al-Shariah+as+Philosophy+of+Islamic+Law+Ibn+Ashur+El-Mesawi>

Ibn Qayyim al-Jawziyya. *I'lām al-Muwaqqi 'in 'an Rabb al-Ālamīn*. Beirut: Dār al-Jīl, 1973. <https://www.worldcat.org/search?q=I%27lam+al-Muwaqqi%27in+Ibn+Qayyim+Dar+al-Jil+1973>

Ikatan Penerbit Indonesia (IKAPI). "Ikapi Soroti Praktik Pembajakan Buku, Berdampak Besar pada Penulis & Negara." July 5, 2022. <https://ikapi.or.id/berita/post/ikapi-soroti-praktik-pembajakan-buku-berdampak-besar-pada-penulis--negara>

Ikatan Penerbit Indonesia (IKAPI). "Menyelamatkan Perbukuan." May 16, 2025. <https://ikapi.or.id/berita/post/menyelamatkan-perbukuan>

Inayati, Anindya Aryu. "Lindungan Hak Kekayaan Intelektual dalam Hukum Islam." *Ulum al-Syar'i: Jurnal Ilmu Hukum dan Ekonomi Syariah* 10, no. 2 (2021): 115–134. <https://scholar.google.com/scholar?q=Lindungan+Hak+Kekayaan+Intelektual+dalam+Hukum+Islam+Ulumul+Syari+2021>

Inayati, Anindya Aryu, and Yogie Pratama. "Reinterpretasi Hak Cipta sebagai Objek Wakaf dalam Perspektif Maqashid Syariah." *Tasfiyah* 6, no. 1 (2022): 203–230. <https://doi.org/10.21111/tasfiyah.v6i1.7438>

Inayati, Anindya Aryu, et al. "Bibliographic Analysis on Copyright Dispute Issue in Indonesia." *Adzkiya: Jurnal Hukum dan Ekonomi Syariah* 12, no. 2 (2024): 197–214. <https://doi.org/10.32332/adzkiya.v12i2.8548>

Ismail, Z. *Perlindungan Hak Cipta dan Konsep Fair Use dalam Islam*. Bandung: Graha Ilmu, 2020. <https://www.worldcat.org/search?q=Perlindungan+Hak+Cipta+dan+Konsep+Fair+Use+dalam+Islam+Ismail+Graha+Ilmu+2020>

Khalidin, Bismi. "Islamic Perspective on Copyright and Intellectual Property Rights." *American Journal of Humanities and Social Sciences Research (AJHSSR)* 8, no. 1 (2024): 199–205. <https://www.ajhssr.com/wp-content/uploads/2024/01/ZT2481199205.pdf>

Khasani, Ahmad. "The Legality of Intellectual Property Rights According to Islamic Law." *Al-'Adalah: Jurnal Syariah dan Hukum Islam* 7, no. 1 (2022): 1–28. <https://scholar.google.com/scholar?q=The+Legality+of+Intellectual+Property+Rights+According+to+Islamic+Law+Al-%E2%80%98Adalah+2022>

Lowe, Julie. "The Moral Rights of Authors under Islamic Law." *Islamic Law and Society* 29, no. 3 (2022): 361–386. <https://doi.org/10.1163/15685195-bja10026>

Makhlouf, Ahmed Gad. "Towards a Maqāṣid-Based Copyright Policy." *Oxford Journal of Law and Religion* 11, no. 2 (2022): 305–330. <https://doi.org/10.1093/ojlr/rwac015>

Makhzoumi, [first name unknown], et al. "The International Framework for the Protection of Intellectual Property Rights: An Overview." In *Business Analytical Capabilities and Artificial Intelligence-Enabled Analytics: Applications and Challenges in the Digital Era*, 279–288. Cham, Switzerland: Springer Nature Switzerland, 2024.

Meirison, and Nazar. "The Protection of Intellectual Property Rights According to Islamic Law." *Al-Ahkam* 31, no. 1 (2021): 127–152. <https://scholar.google.com/scholar?q=The+Protection+of+Intellectual+Property+Rights+According+to+Islamic+Law+Meirison+Nazar+Al-Ahkam+2021>

Muhaimin. *Metodologi Penelitian Hukum*. Mataram: Mataram University Press, 2020.

Palar, Ayu, et al. "Inclusive Rights to Protect Communal Intellectual Property: Communal Rights and the Moral Economy of Indigenous Regulation." *Cogent Social Sciences* 9, no. 2 (2023): 2274431. <https://doi.org/10.1080/23311886.2023.2274431>

Peukert, Christian, and Margaritha Windisch. "The Economics of Copyright in the Digital Age." *Journal of Economic Surveys* 39, no. 3 (2025): 877–903. <https://doi.org/10.1111/joes.12640>

Putra, Dedisyah, Asrul Hamid, and Martua Nasution. "Metodologi Maqashid Al-Syari'ah Jasser Auda Dalam Perspektif Hukum Keluarga Islam." *AL-SYAKHSIYYAH: Jurnal Hukum Keluarga Islam dan Kemanusiaan* 4, no. 1 (2022): 77–100. <https://doi.org/10.35673/as-hki.v4i1.2427>

Rahman, A. *Hak Cipta dalam Perspektif Islam dan Hukum Positif*. Jakarta: Pustaka Syariah, 2020.

Rahman, A., ed. *Hak Cipta dalam Perspektif Hukum Islam*. [Indonesia], n.d. Accessed December 30, 2025

Rahman, Muhammed Atiqur. "Designing Copyright Laws to Combat Digital Piracy While Balancing Private and Public Interests in Bangladesh." PhD diss., Macquarie University, 2022.

Rao, K. Varaprasada, and Sandeep Kumar Panda. "Intellectual Property Rights (IPR) and Islamic Law: A Review." In *Proceedings of [conference title unspecified]*. Purbalingga: EAI, 2022.

Rizkia, Nanda Dwi, and Hardi Fardiansyah. *Metode Penelitian Hukum (Normatif dan Empiris)*. Bandung: Penerbit Widina, 2023. <https://repository.penerbitwidina.com/media/publications/564622-metode-penelitian-hukum-normatif-dan-emp-bd1e921f.pdf>

Rosele, M. I., et al. "The Concept of Wealth (Māl) in the Sharī'ah and Its Relation to Digital Assets." *SAGE Open* 12, no. 2 (2022). <https://doi.org/10.1177/21582440221102424>

Rozencwaig-Feldman, Tehila. "Protecting the Future: Addressing Copyright in the Metaverse." *Fordham Intellectual Property, Media & Entertainment Law Journal* 32, no. 1 (2021): 1–67. <https://ir.lawnet.fordham.edu/iplj/vol32/iss1/1/>

al-Sarakhsī, Shams al-Dīn. *Al-Mabsūt*. Beirut: Dār al-Ma'rifah, 1986. <https://www.worldcat.org/search?q=Al-Mabsut+al-Sarakhsī+Dar+al-Ma%27rifah+1986>

Siregar, T. *Fatwa MUI dan Implikasinya terhadap Perlindungan Hak Cipta di Indonesia*. Medan: Pustaka Hukum Islam, 2021. <https://www.worldcat.org/search?q=Fatwa+MUI+dan+Implikasinya+terhadap+Perlindungan+Hak+Cipta+di+Indonesia+Siregar+2021>

Sukiati, et al. "Copyright as Waqf Object in Indonesia: A Review from Maqashid Sharia Perspective." *Al-Istinbath: Jurnal Hukum Islam* 8, no. 1 (2023): 91–116. <https://doi.org/10.29240/jhi.v8i1.6532>

Tarmidzi, T. "Undang-Undang Hak Cipta Nomor 28 Tahun 2014 Dalam Prespektif Ekonomi Hukum Ekonomi Islam." *Jurnal Hukum Islam* 15, no. 2 (2017): 201–228. <https://doi.org/10.28918/jhi.v15i2.1306>

Tarmidzi, T., et al. "Pattern of Sharia Compliance in KSPPS in Indonesia: Study of Sharia Governance and Sharia Compliance Principles." *Islamic Banking: Jurnal Pemikiran dan Pengembangan Perbankan Syariah* 10, no. 2 (2025): 245–274.

Wa Ode, Zuliartti, and Fitriah Faisal. "Uncharted Water: Indonesia's Copyright Challenges in the Digital Age." *International Journal of Law in Changing the World* 4, no. 1 (2025): 103–119. <https://doi.org/10.54934/ijlcw.v4i1.119>

Wiradirja, Imas Rosidawati, et al. "Legal Problematics in the Execution of Copyrights as Fiduciary Collateral in the Indonesian Law." *International Journal of Cyber Criminology* 16, no. 2 (2021): 13–23. <https://doi.org/10.5281/zenodo.4766538>

al-Zuhaylī, Wahbah. *Usul al-Fiqh al-Islami*. Damascus: Dar al-Fikr, 1985. <https://www.alkitab.com/72827.html>



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