

THE CONCEPT OF INTELLECTUAL PROPERTY AND OWNERSHIP RIGHT ACCORDING TO ISLAMIC JURISPRUDENCE

Zanirah Mustafa @ Busu^{1*}

*Academy of Contemporary Islamic Studies, UiTM Cawangan Kelantan
zanir126@uitm.edu.my*

Nurul Hidayah Awang @ Ab. Rahman²

*Academy of Contemporary Islamic Studies, UiTM Cawangan Kelantan
nurul1659@uitm.edu.my*

Nik Muniyati Nik Din³

*Academy of Contemporary Islamic Studies, UiTM Cawangan Kelantan
nikmuniyati@uitm.edu.my*

Nurul Izzah Noor Zainan⁴

*Academy of Contemporary Islamic Studies, UiTM Cawangan Kelantan
nurulizzah@uitm.edu.my*

Mohd. Khairul Anuar Ismail⁵

*Academy of Contemporary Islamic Studies, UiTM Cawangan Kelantan
anuar785@uitm.edu.my*

Intan Nurul 'Ain Mohd Firdaus Kozako⁶

*Faculty of Business and Management, UiTM Cawangan Kelantan
intan866@uitm.edu.my*

Abstract: Intellectual property is a property that most ordinary people in Malaysia are unconcerned about the law on illegal use of the intellectual property. The use of intellectual property without lawful authorization is an offense that may be subjected to legal action by a responsible party in Malaysia. In Malaysia, the sale of counterfeit CDs or DVDs is so rampant at night markets. Furthermore, many netizens commonly download local or international films from illegal websites on the internet. Therefore, all parties to work together to address this emerging issue by using effective approaches. The main objective of this study was to explain the concept of intellectual property from the perspective of Islamic jurisprudence (fiqh). Additionally, this study identified the degree of position and status of intellectual property rights in Islamic fiqh. Methods of library research, documentation, observations, and research methods are used to collect relevant information. The data collected in this study indicated that most people in Malaysia had abused intellectual property rights. Hence, intellectual property must be protected just like traditional property such as lands or goods. If intellectual property law is not enacted in Islam jurisprudence, the public will indiscriminately and continuously commit piracy, plagiarism, and other violations of intellectual property. Consequently, a concerted effort is required by conducting screening, inspection, or monitoring, and action should be taken at state and international levels. Through literature study and descriptive analysis approach, this journal concludes that if intellectual property rights cause harm to society and the state, especially in the exploitation of material rights, then they have created a monopoly that is detrimental and prohibited.

Keywords: Fiqh, Intellectual Property, Islamic Jurisprudence, Rights, Ownership

1. Introduction

Illegal use of intellectual property is a common phenomenon worldwide and burdens many nations, particularly developing countries, including Malaysia. The protection of the intellectual property is an essential component in ensuring better economic development for the countries.

* Corresponding author: Zanirah Mustafa @ Busu, Academy of Contemporary Islamic Studies, UiTM Cawangan Kelantan, Bukit Ilmu, 18500 Machang, Kelantan. Email: zanir126@uitm.edu.my

Nonetheless, with the advent of technology, the abuse of intellectual property rights is more apparent. In Malaysia especially, people are unconcerned about the consequences of illegal use of the intellectual property. Counterfeiting or pirating intellectual property-based products have incurred substantial revenue loss because of the widespread availability of pirated goods, such as in Malaysia's local markets or night markets. Lack of strict law and enforcement from authorities to fight against the abuse of intellectual property contributes to the high piracy rate in this country. Therefore, immediate actions are necessary to curb this issue. In the present study, we utilized reviewing the statistics on the abuse of intellectual property. Through this approach, we have successfully collected the actual data on intellectual property. The results of this study indicated that most people in Malaysia have incorrectly and illegally use intellectual property through inappropriate methods. Therefore, we have surveyed all UiTM Machang students and found that most do not receive extensive exposure to the definition of intellectual property and the applicable laws. Islam, the second-largest religion after Christianity, is the monotheistic religion articulated by the Qur'an and the teachings and normative example of the Prophet Muhammad. Islam has 1.57 billion adherents, making up 23% of the world population, and is considered one of the fastest-growing religions in Europe and other continents (Khan Javaid Iqbal, 2013).

2. Definition of Intellectual Property According to Islam

There is no specific mention of the term intellectual property in Islamic fiqh, yet the principle of intellectual property is not alien in Islamic law. According to Mustafa Ahmad al-Zarqa, one of the most distinguished Islamic scholars and jurists of the 20th century, the term "intellectual property" includes copyrights such as the author's right to take advantage of his books and the journalists to use privilege on his newspaper. While, according to Al-Shaykh Ali al-Khafif, intellectual property refers to intangible objects (*ma'nawiyah*) that are undetectable to the senses but can be traced with intellect and mind, such as ideas and creations. According to Islamic fiqh, the definition of intellectual property is "a group of rights declared by syara' for individuals in the jurisdiction of controlling the idea and ensuring it fulfills its interest in using and administering within the scope of the prescribed rules of syara'. The definition of intellectual property, according to Islamic jurisprudence that the fiqh scholars have put forward can be concluded as a group of rights convicted by the syara' for individuals in the jurisdiction that controls ideas and ensures legal interests are fulfilled by using and administering within the scope of the provisions of syara'. Generally, this definition is not much different from what is put forward by civil law scholars. Under Malaysian law, the types of intellectual property include industrial property and copyright (Yusri Mohamad Ramli, 2007). Intellectual property is an encompassing term for creating the thought and reputation of a business as given in a business that can be protected by law. Regarding the nature of things that should be protected by intellectual property, the laws differ from one country to another following the understanding of the intellectual property system. (Wipo, 2019)

Intellectual property refers to creations based on someone's thoughts or thinking. "Intellectual Property" represents all creation or work involving one's thinking or intelligence. The term 'intellectual property has been applied for more than 150 years, referring to legal areas including copyright, patent, trademark, design, and other related rights (Bentley & Sherman, 2001). Intellectual property rights are also the predecessor of all types of property rights in the form of non-existent physical property. It protects innovation and creation as well as gives rewards to the innovations and creations (Torremans & Holyoak, 1998). Intellectual property is related to information incorporated into the physical property that applies to copies of goods worldwide. Intellectual property exists not only for copies of goods but to the information on such goods.

Intellectual property is a term that refers to several different types of creation of the minds which the exclusive rights are recognized under the terms of related law. Under the law of intellectual property, the owner is granted certain exclusive rights for various unrealized assets such as music, writings, artworks, inventions, and words, phrases, symbols, and designs. The types of intellectual property include copyright, trademark rights, and trade secrets in a certain law. Intellectual property in law refers to human creativity that provides for various aspects of music, literary and artistic works,

inventions, symbols, names, images, and designs used in business, including copyright, trademark, patent, and other related rights. Under the rules or law of intellectual property, the holder of one of these abstract properties has certain exclusive rights to the intellectual property they have created.

Intellectual property development within a country will increase the level of innovation and economy and raise the country to a nation with a knowledge-based economy. The strength of intellectual property laws in a country is also one of the key factors influencing external investment, especially for knowledge-based businesses. Some examples of intellectual property are books, movies, and so on. In Islam, intellectual property is not enforced by Islamic law. Nevertheless, Islamic law principles are the place of reference for the regulation of intellectual property rights. Intellectual property or *Haq Al-Ibtikar* in Arabic is considered property in Islam, and property is one of five goals (*maqasid*) to be protected by Islam. The concept of property in Islam can be owned, which is the property of a person and has an economic value. Though intellectual property does not exist physically, it has a high economic value because it is an idea and knowledge that is not in anyone else.

The definition of intellectual property according to Islamic fiqh, which has been raised by the fiqh scholars, may be concluded as a group of rights enacted by syara' for individuals in the jurisdiction that controls the picture of the ideas and is determined to fulfill the legal interests by using and administering within the scope of the syara' provisions that have been set. Generally, the definition is not much different from what the civil law scholars have stated. The types of intellectual property under Malaysian law include industry and copyright properties. Industrial property includes trademarks, patents, industrial designs, integrated circuit designs, and so on.

Discussions on intellectual property are still new, though the intellectual property has long existed. However, the law is still inadequate, and its enforcement is still poor. Among the scholars, including Al-Imam Jalal Al-Din Al-Suyuti, has debated on intellectual property issues in his work, *Al-Fariq Bayn Al-Musannif Wa Al-Sariq*. Al-Iman Al-Qarafi also debates about intellectual property in his book, *Al-Furuq*. The compilation of the knowledge of hadith such as *mustalah al-hadith*, *rijal al-hadith*, and *al-jarh wa al-ta'dil*, is also the way of the previous ulama to protect intellectual property to keep the uphold the prophet, Rasulullah (pbuh). The discussion of intellectual property is still considered new even though intellectual property has existed for a long time. The only problem is that the law on it is not yet established and effective. The study of intellectual property legislation has been identified to have begun with the Paris Convention on March 20, 1883. Since then, legal scholars have focused intensely on intellectual property-related issues. These efforts intensified after the drastic development of information and communication technology (ICT) and the widening globalisation in the world economy at the end of the 20th century (Yusri Mohamad Ramli, 2007).

3. Research Methodology

The authors used library research, documentations, observations, and research methods to collect related information in completing this study. In addition, the authors also collected information from websites published by JAKIM on intellectual property. This study indicated that most people in Malaysia had abused intellectual property rights through various methods. This study employed the descriptive analysis method, which involves a library-based method. The method chosen is one of the best approaches to obtain literature material such as books, articles, and journals, including the classical and modern syariah texts. These materials are scrutinized to develop the concept and scope of analysis to extract the views of distinguished Islamic scholars about the topic.

4. Resources for Laws on Intellectual Property In Islamic Fiqh

Figure 1: Resources for Laws on Intellectual Property in Islamic Fiqh



Based on the sources for laws on intellectual property, it is suggested that wrongly acquired intellectual property would cause harm. This harm is illustrated when the idea of a creator's idea is not legislated. This will lead to distress and suffering to the owner, which will then extend to the public, when the development of the fields of creation such as scholarly works, new inventions in science and technology, and art is stunted by the irresponsible actions of the reckless people. Thus, society and the nation will be affected by the infringement on intellectual property rights.

Hence, it is clear that intellectual property must be protected similar to other property of goods. Intellectual property is also prevented from being abused or violated by anyone. If intellectual property is not legislated in Islam, the public will indiscriminately and continuously commit piracy, plagiarism, and other intellectual violations. Consequently, a concerted effort is required by conducting screening, assessment, or monitoring and taking action at the state level through the Ministry of Home Affairs (KDN). For instance, the Ministry of Domestic Trade and Consumer Affairs, the Intellectual Property Corporation of Malaysia, and Higher Education Institutions have conducted screenings at the international level, such as the World Intellectual Property Organization (WIPO).

5. Conclusion

In conclusion, intellectual property is the property of different minds which the exclusive right is recognized under the rules of affiliated law. Hence, strong cooperation is needed by all parties to ensure that intellectual property is not misused. For that purpose, authorities need to play an important role by preventing any misconduct associated with intellectual property. Cooperation and joint venture among the scholars of civil and shariah laws are also expected to further reinforce intellectual property legislation so that individual rights that have persisted in coming up with the ideas are protected from any form of abuse and violation. The law should be directed to those who violate the rights and buyers of intellectual property, knowing that the goods they bought were copied and stolen. The understanding of religion should enhance this awareness by interpreting the fiqh laws and applying moral values that are universal and appropriate for every religion, nation, place, and era.

6. Acknowledgment

The authors are members of Special Interest Group (S.I.G) Muamalat Governance. We want to thank Universiti Teknologi MARA (UiTM) Kelantan Branch for support and encouragement to publish this paper. We thank Allah for giving us patience, motivation, and assistance to write this journal.

7. References

- Beltrametti, S. (2010). *The Legality of Intellectual Property Rights under Islamic Law*. The Prague Yearbook of Comparative Law 2009. Mach, T. et al. (Eds). Prague.
- Bentley, L. & Sherman, B. (2001). *Intellectual Property Law*. Oxford University Press. Oxford
- Ezieddin Mustafa Elmahjub. (2014). *Protection of Intellectual Property in Islamic Shari'a and the Development of the Libyan Intellectual Property System*.
- Khan Javaid Iqbal. (2013). *Intellectual Property Rights in Islam: A Perspective*. A Quarterly Double-Blind Peer Reviewed Refereed Open Access International e-Journal – Included in the International Serial Directories.
- Meirison, Zerly Nazar. (2021). *Intellectual Property Rights and Monopoly in the Perspective of Islamic Jurisprudence*. Universitas Islam Negeri Imam Bonjol Padang, Indonesia, Department of Education Sidney, Australia
- Mohd Izzat Amsyar Mohd Arif, Hisham Hanapi. (2017). *The Concept of Intellectual Property as Al Mal: An Islam Perspective Approach*. The National University of Malaysia, Bangi, Tunku Abdul Rahman University College, Kuala Lumpur
- Taufiq. (2018). *Memakan Harta secara Batil (Perspektif Surah An-Nisa': 29 dan At-Taubah: 34)*. Jurnal Ilmiah Syari'ah.
- Torremans, P. & Holyoak, J. (1998). *Holyoak and Torremans Intellectual Property Law*. 2nd Edition. Butterworths. London.
- W. Lesser. (2002). *The Effects of Intellectual Property Rights on Foreign Direct Investment and Imports into Developing Countries in the Post-TRIPS Era* Department of Applied Economics and Management. Cornell University.
- Wipo. (2019). *Asasiyat al-Milkiyyah al-Fikriyyah: Sual Wa Jawab Littalabat Wa taalibat*. China.
- Yusri Mohamad Ramli. *Majalah Sinar Rohani Bil. 44. (2007). Harta Intelek Menurut Syariat Islam*. Retrieved Jan/Feb 2007, from <https://madrasahsunnionline.blogspot.com/2015/12/harta-intelek-menurut-syariat-islam.html>. Retrieved from Madrasah Sunni Online.
- Zaid, H. (2006). *Intellectual Property Law and Strategy*. Thomson Sweet & Maxwell Asia
- Zanirah, M, Siti Fatimah, T, Noor Saliza, Z, Nor Asmira, M. J., et.al. (2017). *Modul Pengantar Perakaunan Islam*. Universiti Teknologi MARA: Kelantan