

# FIQH CLASSIFICATION AND THE METHODOLOGY FOR DETERMINING THE LEGAL RULING OF THE INDONESIAN ULEMA COUNCIL'S FATWA ON INTELLECTUAL PROPERTY RIGHTS

Panji Adam Agus Putra<sup>1a\*</sup>, Ira Siti Rohmah Maulida<sup>1</sup>, Nazwa Divalya Raya Gunadi<sup>1</sup>

<sup>1</sup>Sharia Economic Law Study Program, Faculty of Sharia, Islamic University of Bandung

<sup>a</sup>[panjiadam@unisba.ac.id](mailto:panjiadam@unisba.ac.id)

\*Corresponding Author: [panjiadam@unisba.ac.id](mailto:panjiadam@unisba.ac.id)

**Abstract:** The issue of intellectual property rights (ipr) is a 'contemporary' issue. scholars discuss the issue of ipr in contemporary fiqh books, also known as fiqh of nawazil. therefore, in the issue of intellectual property rights, there is disagreement or differing opinions among scholars in viewing the status of ipr itself. this is influenced by whether ipr is considered a property right (huqul al-maliyyah) or not. it also involves the discussions among classical jurists regarding the concept of 'mal' (wealth/property). the legal implications of this difference of opinion are that if ipr can be categorized as mal (property), then its owner has the authority to protect, preserve, and demand compensation/damages from those who use it unlawfully. the same applies in the opposite case. the indonesian ulema council (mui), as the fatwa authority in indonesia, has legal provisions related to intellectual property rights (ipr). therefore, it is necessary to study the fiqh classification (legal construction) of mui's fatwa regarding ipr and the methodology for determining its legal rulings. The purpose of this study is to determine the construction of Islamic jurisprudence related to property rights in Islam and to analyze the method of determining the law of the MUI fatwa regarding Intellectual Property Rights. This research employs a normative juridical approach. This research is classified as a literature study, and the data used are secondary. The data analysis method used is qualitative. research results show that fiqh classification or legal construction regarding intellectual property rights and copyright, where scholars view copyright, when analyzed with the concept of al-mâl, as one form of al-mâl that is transferable, valuable, and utilitarian. it is classified as al-mâl because copyright meets at least three criteria: it has qimah (value), it can be owned, and it can be utilized. The method of determining the legal ruling in the mui fatwa regarding intellectual property rights uses four methods, namely: (1) takhrij furu' ala ushul;, (2) mashlahah (public interest), and (3) sadd al-dzariah (active prevention to prevent actions that are prohibited)

**Keyword:** Fiqh Classification, MUI fatwa, Methodology for Determining

## 1. Introduction

The concept of protection for creative works is referred to as the protection of Intellectual Property Rights (IPR). It first emerged after the industrial revolution in Europe. In general, the issue of copyright was not recognized in the early stages of the growth of Islam, particularly in relation to the economic rights that existed at the time. However, if viewed from the perspective of moral responsibility, scholarly accountability, and respect for the author, the Islamic community has agreed that it is obligatory to write the author's name on every composition or writing (Huda, 2020).

In the context of Islamic law, the issue of Intellectual Property Rights (IPR) can be considered a new issue that, literally, has not been discussed using specific terminology. As a new issue, IPR has not been thoroughly examined or its legal status established by the scholars. In fact, some parties still debate its existence, particularly in the context of authorship rights, as IPR is seen as a product of Western capitalism that contradicts the values of authorship in Islam (Wijayati, 2014).

Intellectual Property Rights (IPR), as a form of wealth, is a legal system that protects an individual's intellectual activities. It certainly has its own concept regarding the mechanisms for implementation and protection of these activities. The protection provided is in the form of guarantees that ensure an individual's comfort in carrying out intellectual activities, whether it involves the protection of rights to seek knowledge or to create, specifically, intellectual works (Hulaify, 2014).

Muslim society in Indonesia certainly requires clarification on matters related to copyright infringement according to Islamic law, particularly regarding the legal consequences of copyright violations. This need makes the discussion of copyright infringement law based on Islamic principles highly important to undertake (Yovitasari, 2022).

Copyright in contemporary Islamic thought is known as *haq al-ibtikar*. Within the scope of *haq al-ibtikar* (copyright), the term "haq" refers to the authority or ownership over a newly created work (*al-ibtikar*). A copyright encompasses both economic rights (*haq al-iqtishadi*) and moral rights (*haq al-adabi*). Regarding economic rights, the creator of the work is entitled to receive material benefits from their creation (Sutisna, 2021).

The Indonesian Ulema Council (MUI) issued a fatwa in July 2005, number: 1/MUNAS VII/MUI/5/2005, regarding the protection of Intellectual Property Rights (IPR) contained within Copyright, as well as MUI Fatwa Number 1 of 2003 on Copyright. This research focuses on the construction of *fiqh muamalah* related to intellectual property rights and copyright, as well as the legal determination methods used by the Indonesian Ulema Council (MUI) regarding the fatwa on Copyright and the fatwa on Intellectual Property Rights.

## **2. Discussion**

### **2.1 The Construction of Fiqh on Intellectual Property Rights**

In discussions regarding copyright, scholars debate whether copyright can be categorized as *al-mâl* (property) or not. According to the scholars, copyright can be categorized as property if it meets three elements: it must have *qimah* (value), it must be ownable, and it must be usable in normal circumstances.

According to Fauzi's analysis (Fauzi, 2017) These three elements of property are in accordance with the concept of copyright. First, *qimah* (value). It is undeniable that copyright has value. With its value, copyright provides both material and non-material benefits to the creator or copyright holder. Second, it can be owned. Ownership occurs when the copyright is expressed in *mahall al-ibtikar* (the means of expressing something), whether in a concrete or abstract form.

Copyright is a form of ‘aqliyyah ma’nawiyah (intellectual property) that is not ‘ayn (physical object). Article 3, paragraph (1) and (20) of the Copyright Law No. 19/2002 states that copyright is a movable object that can be inherited, donated, bequeathed, and so on.

One of the key points to consider in the above law is the phrase "movable object." These two words, "object" and "movable," have their own meanings and implications in legal terminology. What is meant by "object" or "property" in civil law is any item or right that can be controlled by ownership rights.

Examining the use of the term "movable object" in Article 3 of Copyright Law No. 19/2002 and the term haqq ‘ayni in fiqh for copyright, Fauzi argues that the intended meaning of both terms is the same. In other words, there is a difference in terminology, but both refer to the same concept. In fiqh, an idea is not protected until it is realized, either in a concrete or abstract form, allowing it to be owned, read, studied, watched, and so on, a process referred to as istifa’. Meanwhile, the law directly refers to "movable objects," meaning the idea that has been realized into a physical object as a medium. Therefore, Saidin states that what is protected is not the physical object itself, such as a book or a painting, but what is contained within it.

Third, it can be utilized. Article 12 of Copyright Law No. 19/2002 states that the creations protected by this law include creations in the fields of science, arts, and literature. Based on this article, copyright has provided significant benefits to society.

Based on Fauzi's analysis above, copyright possesses qimah (value), can be owned, and can be utilized. Based on these elements of māl (property), copyright can be classified as al-māl. Fathi Durayni seems to support this classification, which can be understood from his writing as follows:

فان من ابرز خصائص الحق المالى, قبوله الاعتياض عنه وجريان الارث فيه, والزام مغتصب  
محلّه عيناً, ان كان قائماً او متلفه بالتعويض والضمان

*“The most prominent characteristic of al-haqq al-māli is that it can be the object of exchange transactions, can be inherited, and requires the person who seizes it to replace the item with a similar one, if available, or provide compensation and indemnity for the damaged item.”*

The classification of copyright into al-māl is also supported by other scholars who define al-māl as follows:

التعميم في مفهوم المالى حتى تشمل الاعيان والمنافع والمعاني والحقوق

*“The understanding of al-māl includes al-‘ain (material), al-manāfi’ (benefits), al-ma’ānī (value), and al-huqûq (rights).”* (Al-Duryani, 1980).

Copyright is classified as māl manqûl because it can be transferred from one place to another. As a consequence, there has been a khilâf (difference of opinion) among scholars regarding the permissibility of making it waqf, especially among the Hanafiyyah school of thought. According to them, the mauqûf (waqf property) must be something permanent and everlasting, while manqûl is considered easily perishable. In contemporary studies on waqf, the object is no longer limited to immovable property; recently, even cash waqf (money) has emerged. In relation to copyright, it can still be made mauqûf since copyright is permanent, not shrinking or disappearing. On the contrary, it has the potential to be developed. For example, the

copyright of a written work can be printed and sold, and the proceeds can be used for the benefit of the community.

From the perspective of its presence in the market, copyright is a special right, and it is impossible for one copyrighted work to have the same characteristics as another in the market. From this point of view, copyright is classified under *mâl qimi*. As a consequence, if another party engages in actions that harm the owner, they must pay compensation in accordance with the laws that govern such matters.

Copyright can be benefited by anyone without diminishing the substance of the work itself, which is why it is classified under *mâl isti'mâlî*. As a consequence, copyright can be the object of *isti'âlah*, *ijârah*, and similar transactions. In relation to copyright as *haq mâlî*, it also provides other rights as follows:(Fauzi, 2017)

First, as *haq mâlî*, copyright is a right that grants its creator *hâq al-wilâyah*. The creator has the right to own, use, benefit from, and do other things with the work, as long as it does not harm others. Therefore, copyright can be made *ma'qûd 'alayh* (the subject of a contract), whether in *mu'âwadhât* (commercial exchange) contracts or *tabarrû'at* (social/non-commercial) contracts, such as being *waqf'd* or inherited.

Second, *haq mâlî* also gives rise to *hâq al-intifâ'*, meaning that the copyright holder is allowed to use the work and gain both material and non-material benefits. Those who do not hold the copyright are not permitted to use this right unless they obtain permission from the copyright holder, let alone sell it with the intent of obtaining material profit/benefit.

Third, *haq al-istihsan* means that a copyright can be pledged to another party and used as collateral. Since copyright has both material and non-material value, it does not prevent the copyright holder from pledging it to another party who accepts it.

Fauzi,(Fauzi, 2017) further informs that copyright is classified as *ghair al-mujarrad* rights. This means that the actions of the copyright holder will affect the existence of the copyright itself. If the holder no longer asserts their rights, the work becomes public domain. It can be copied, reproduced, and distributed, and others may even derive material profit from the work.

The explanation above has provided clarification, supported by several arguments, that copyright is classified as one form of *al-mâl*. The next question is whether copyright is classified as *'ayni* or *syakysi* according to the concept of *al-mâl*. To answer this question, it is necessary to first examine the definition provided in Article 1 of Copyright Law No. 19/2002. The article states:

*"Copyright is an exclusive right for the creator or the right holder to announce or reproduce their creation or grant permission for that, without limiting the restrictions under applicable laws."*

Upon examining the wording of Article 1 of Copyright Law No. 19/2002, it can be understood that this right is a connection between the creator and their creation. This means that the right is automatically granted when these two elements—creator and creation—are present. Therefore, copyright can be classified as *haq 'ayni*. What is meant by *haq 'ayni* is the authority granted by *shar'* to an individual over something. In this context, "the individual" refers to the creator, and "something" refers to their creation (Fauzi, 2017).

In line with what has been mentioned above, Fathi al-Durayni also classifies copyright as haq ‘ayni. Furthermore, Fathi al-Durayni explains as follows:

إذا تقررته علاقته بانتاجه مباشرة ومسؤولية عنه واختصاصه به, فالحق علاقة اختصاصية مباشرة يقرها الشارع, كما علمت, واقاراه بحكم ومصدره حكم الشارع هنا هو العرف, لان العرف من مصادر الشريعة, واساس هذا العرف هو المصلحة, كما بينا. فالنظر لكون العلاقة مباشرة, اقرها الشارع كان الحق عينيا.

*“When it is confirmed that there is a direct relationship between the creator and their creation, and that the creator is responsible and has exclusivity, then this right is considered a special relationship established directly by shar‘ (Allah), as you know. Its determination is through a legal system, and the source of this legal system is ‘urf (custom). The foundation of custom is the values of maslahah (public benefit), as we have explained. Given that the relationship between the right and its holder is direct, it is established directly by shar‘ as haq ‘ayni”.* (Al-Duryani, 1980).

Haq ‘ayni, according to him, is not limited to something material, but also includes al-ma’ânî (non-material), such as benefits. Furthermore, according to Fathi al-Durayni, haq ‘ayni also includes something outside of al-mâl, such as the right of divorce (talâq), the right of custody (hadhânah) after divorce. This addition is important to clarify that haq ‘ayni is not restricted to something tangible (perceptible to the senses), but in this context, the term ‘ayni as used in shar‘ terminology can encompass two forms: maddi (material) and ma’nawî (non-material). With this scope, copyright can be categorized as part of ma’nawî. This is evident in several references in contemporary fiqh muamalah texts, where the term used when discussing copyright is huqûq al-ma’nawîyyah.

Based on the explanation above, it can be concluded that copyright, when analyzed with the concept of al-mâl, is one form of al-mâl that is manqûl, qimî, and isti’mâlî. It is classified as al-mâl because copyright meets at least three criteria: it has qimah (value), it can be owned, and it can be utilized.

## **2.2 Method of Legal Determination of the Fatwa of the Indonesian Ulema Council (MUI) on Intellectual Property Rights and Copyright**

In Indonesia, the regulation of Intellectual Property Rights (IPR) is not only based on state regulations but also involves social and religious institutions. One example of this is the action taken by the Indonesian Ulema Council (MUI). The Indonesian Ulema Council has issued two fatwas related to IPR: first, Fatwa Number 1 of 2003 on Copyright; and second, Fatwa Number 1 of 2005 on the Protection of Intellectual Property Rights.

On January 18, 2003 (14 Dzulqa’dah 1423 H), the Fatwa Commission of the Indonesian Ulema Council (MUI) issued Fatwa Number 1 of 2003 on Copyright. The MUI's decision regarding copyright consists of two parts: the considerations and the legal ruling (fatwa). The considerations are divided into three sections: the social considerations, the evidence from the Quran, Hadith, and fiqh principles, and the opinions of scholars regarding copyright (Mubarak, 2005).

The considerations in the MUI fatwa on Copyright, which are based on social balancing, are as follows: (1) Copyright infringement (in 2003) had reached a level that was highly troubling and harmful to many parties, especially copyright holders, the state, and society; (2) Due to these copyright infringements, the Indonesian Recording Industry Association (ASIRI) requested a fatwa from the MUI; and (3) The Fatwa Commission of MUI deemed it necessary to issue a fatwa on the status of copyright under Islamic law, to serve as a guide for Muslims and other parties in need of it (Mubarok, 2005).

The considerations based on legal evidence include 4 verses from the Quran, 6 Hadiths, and 3 fiqh principles. The Quranic verses that were used as considerations are (Mubarok, 2005):

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

*“O you who have believed, 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 the people in wrongdoing, while you know [it is unlawful].” (Q.S. al-Nisa: 29).*

وَلَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بِالْبَاطِلِ وَتُدْلُوا بِهَا إِلَى الْحُكَّامِ لِتَأْكُلُوا فَرِيقًا مِنْ أَمْوَالِ النَّاسِ بِالْإِثْمِ وَأَنْتُمْ تَعْلَمُونَ

*“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 the people in wrongdoing, while you know [it is unlawful].” (Q.S. al-Baqarah: 188).*

وَلَا تَبْخَسُوا النَّاسَ أَشْيَاءَهُمْ وَلَا تَعْتُوا فِي الْأَرْضِ مُفْسِدِينَ

*“And do not wrong the people with their rights and do not commit abuse on the earth, spreading corruption.” (Q.S. al-Syu'ara: 183).*

لَا تَظْلِمُونَ وَلَا تُظْلَمُونَ

*“You will not wrong [or oppress] and you will not be wronged [or oppressed].” (Q.S. al-Baqarah: 279).*

The six Hadiths used as legal considerations in the MUI fatwa on Copyright are as follows (Mubarok, 2005):

مَنْ تَرَكَ مَالًا فَلِوَرَثَتِهِ وَمَنْ تَرَكَ كَلًّا فَلِإِنِّيْنَا (رواه البخارى)

*“Whoever leaves wealth, it is for his heirs, and whoever leaves a family in poverty, let it be my responsibility.” (H.R. Bukhari). (Al-Bukhari, 2008).*

إِنْ دِمَائِكُمْ وَأَمْوَالُكُمْ عَلَيْكُمْ حَرَامٌ (رواه ابن جارود)

*“Indeed, your blood and your wealth are sacred (protected).” (H.R. Ibn Jarud).*

خَطَبَنَا رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ فَقَالَ أَلَا وَلَا يَحِلُّ لِأَمْرِي مِنْ مَالِ أَخِيهِ شَيْءٌ إِلَّا بِطَيْبِ نَفْسٍ مِنْهُ

(رواه احمد)

*"Prophet Muhammad Saw delivered a sermon to us and said: 'Know that no one's wealth is lawful for another, except with the consent of its owner.'" (H.R. Ahmad).(Ahmad Ibn Hanbal, 2001)*

يَا عِبَادِي إِنِّي حَرَّمْتُ الظُّلْمَ عَلَى نَفْسِي وَجَعَلْتُهُ بَيْنَكُمْ مُحَرَّمًا فَلَا تَظَالَمُوا (رواه مسلم)

*"O My servants, I have indeed forbidden injustice upon Myself, and I have made it forbidden among you. So do not wrong one another." (H.R. Muslim).(Al-Naisaburi, n.d.)*

أَنَّ رَسُولَ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ قَالَ الْمُسْلِمُ أَخُو الْمُسْلِمِ لَا يَظْلِمُهُ وَلَا يُسْلِمُهُ (رواه البخاري)

*"Indeed, the Messenger of Allah (Saw) said, 'A Muslim is a brother to another Muslim; he does not wrong him nor humiliate him.'" (H.R. Bukhari).(Al-Bukhari, 2008)*

لَا ضَرَرَ وَلَا ضِرَارَ (رواه ابن ماجه)

*"You should not harm yourself, nor should you harm others." (H.R. Ibn Majah). (Al-Quzuqaini, 2008).*

The three fiqh principles (qawâ'id al-fiqhiyyah) used as legal considerations in the MUI fatwa on copyright are as follows:

الضرر يزال

*"Harm (loss) must be removed."*

درء المفاسد مقدم على جلب المصالح

*"Preventing harm (mafsadah) should take precedence over bringing about benefits (maslahah)."*

كل ما يتولد من الحرام فهو حرام

*"Everything that arises from something forbidden (haram) is also considered forbidden (haram)."*

The opinions of scholars considered in the MUI fatwa on copyright include the views of the jumhur ulama (majority of scholars) from the Maliki, Shafi'i, and Hanbali schools, the opinion of Dr. Wahbah al-Zuhaili, and the opinion of Muhammad Syatha al-Dimyathi, as follows:

الجمهور من المالكية والشافعية والحنابلة على انها (الانتاج والمبتكر والمنافع) اموال متقومة في ذاتها

كالاعيان سواء بسواء اذا كان مباحا الانتفاع شرعا

*"The majority of scholars from the Maliki, Shafi'i, and Hanbali schools of thought argue that the copyright over original (authentic) creations and benefits is considered valuable property, similar to something that can be utilized according to Islamic law." (Al-Duryani, 1980)*

وبناء عليه يعتبر إعادة طبع الكتاب أو تصويره اعتداء على حق المؤلف، أي أنه معصية موجبة للإثم شرعاً، وسرقة موجبة لضمان حق المؤلف في مصادرة النسخ المطبوعة عدواناً وظلماً، وتعويضه عن الضرر الأدبي الذي أصابه.

*“Based on the fact that the author's copyright is a right protected by shar‘ under the principle of istishlāh, reproducing or copying a book (without proper permission) is viewed as a violation or crime against the author's rights. In other words, such an act is considered a sin in the view of shar‘, and it is seen as theft, which requires compensation to the author for the reproduced manuscript (due to the violation and injustice), as well as the moral damage caused to the author”.* (Al-Zuhaili, 2012).

والتركة ما خلفه الميت من مال أو حق

*"Legacy/property (tikah) is what is left behind by the deceased, whether in the form of wealth or rights."* (Al-Dimyahiti, n.d.)

In addition, the considerations in the MUI Fatwa on Copyright also took into account: (1) The explanation from the ASIRI (Indonesian Recording Industry Association) during the Fatwa Commission meetings on August 21, 2002, and September 21, 2002; (2) The Fatwa Commission meetings on Saturday, November 23, 2002, January 11, 2003, and January 18, 2003; and (3) Various regulations on Copyright, including the most recent Law No. 19 of 2002 on Copyright (Mubarak, 2005).

After considering the evidence from the Quran, Hadith, fiqh principles, opinions of scholars, experts, or specialists, explanations from the interested parties, and relevant laws and regulations, the Fatwa Commission finally determined that: (1) Copyright is regarded as one of the property rights (huqûq al-mâliyât) that is legally protected (mashûn) as property (mâl); (2) Copyright protected by Islamic law pertains to works that do not contradict Islamic law; (3) Copyright can be used as the subject of a contract (ma'qûd'alaih), whether in a commercial or exchange contract (mu'âwadhat), or in a non-commercial contract (tabarru'ât), and it can also be endowed (waqf) and inherited; and (4) Any form of infringement on copyright, particularly piracy, is considered oppression and its legal status is haram.

As the author has mentioned above, the Indonesian Ulema Council (MUI) has issued at least two fatwas related to Intellectual Property Rights (IPR), namely Fatwa Number 1 of 2003 on Copyright and Fatwa Number 1 of 2005 on the Protection of Intellectual Property Rights. These fatwas serve as complementary elements in the protection of IPR. Fatwa Number 1 of 2005 on the Protection of Intellectual Property Rights emerged after the enactment of the IPR Law. Therefore, based on the theory of the positivization of Islamic law, the IPR Law in Indonesia is essentially also Islamic law.

In the formulation and issuance of fatwas, the Indonesian Ulema Council (MUI) in its fatwas related to intellectual property rights and copyright has used at least three methods of legal application, as follows:

### 2.2.1 The Mashlahah Method

The Indonesian Ulema Council (MUI), as the authority responsible for issuing fatwas in Indonesia, plays a strategic role in providing Islamic legal guidance on various aspects of



life, including modern fields such as Intellectual Property Rights (IPR) and Copyright. MUI's fatwa in this area is established through a systematic mechanism, taking into account the principles of Sharia, one of which is the mashlahah method.

The mashlahah method is an *ijtihad* approach that emphasizes the preservation of benefits (*maslahah*) and the prevention of harm (*mafsadah*) for society. In the context of Intellectual Property Rights (IPR) and Copyright, MUI evaluates fatwas by considering the interests of individual creators, the wider community, and adherence to the principles of justice, transparency, and protection of rights.

Each issue is analyzed by weighing the benefits (*maslahah*) and potential harms (*mafsadah*). For example, copyright protection for scientific or artistic works can encourage creativity, innovation, and the economic well-being of the creator, which is considered *maslahah*. On the other hand, copyright infringement or piracy can harm the creator and society at large, thus constituting *mafsadah*.

Through the mashlahah approach, MUI's fatwa on Intellectual Property Rights (IPR) and Copyright not only emphasizes adherence to Islamic legal principles but also provides an ethical and legal foundation for the protection of creative works. This method highlights the importance of balancing the rights of individual creators and the interests of society at large, thereby creating a fair and beneficial IPR system.

### **2.2.2 The Sadd al-Dzari'ah Method**

The Indonesian Ulema Council (MUI) stipulates that in Islamic law, Intellectual Property Rights (IPR) are regarded as one of the *huqûq al-mâliyyah* (property rights) that receive legal protection (*mashûn*) just like *mâl* (wealth). However, MUI sets a condition that IPR must not contradict Islamic law. As *mâl* (wealth), Intellectual Property Rights can be the subject of a contract (*ma'qûd 'alaih*), whether in a commercial contract (*mu'awadhâh*) or a non-commercial/social contract (*tabarruât*), and they can be endowed (*waqf*) and inherited (Hayatudin, 2023)

In issuing its fatwa on Intellectual Property Rights (IPR), MUI refers to the opinions of contemporary scholars such as Fathi al-Duraini and Wahbah al-Zuhaili, both of whom argue that copyright, as a property with value, can be utilized in accordance with Sharia (Wijayati, 2014).

Thus, MUI emphasizes that any form of infringement on Intellectual Property Rights, including but not limited to using, disclosing, creating, utilizing, selling, importing, exporting, distributing, transferring, providing, announcing, reproducing, copying, counterfeiting, or pirating someone else's IPR without permission, constitutes oppression and is considered *haram*.

Therefore, according to MUI, since Intellectual Property Rights (IPR) are rights that must be protected, any violation of IPR is considered a crime against property and is *haram*.

As part of preventive efforts to ensure that imitation, plagiarism, or violations of Intellectual Property Rights do not harm the rights holders, in cases of imitation of an intellectual work that has value as *al-mâl* (property), and as a means of *sadd al-dzarî'ah*, efforts to prevent violations of rights over such "property" are necessary. Therefore, imitation, plagiarism, piracy, and any

infringement on Intellectual Property Rights without permission are deemed haram. Such violations will impact the realization of maslahah, namely the protection of property, which is a fundamental human right protected by religion, and is one of the al-dharûrah al-kams (the five essential rights that must be protected).

The implementation of sadd al-dzarî'ah in the fatwa on Intellectual Property Rights (IPR) is implicit and contrary to the previous identity, which was based on the principle of istishlâh for the protection of IPR. This implementation of sadd al-dzarî'ah uses a fiqh rule that is explicitly mentioned in the consideration section "mengingat" after citing verses from the Qur'an and Hadith. Thus, protection of Intellectual Property Rights provides active protection, while violations are deemed haram also in order to provide protection, but passively and preventively.

### 3. The Takhrij Furu' ala Ushul Method

These rights did not have any legal precedent among classical jurists. In the past, reproducing works was not prohibited. However, with the emergence of the printing press in Europe, it brought enormous profits to publishers, while the creators of the works did not receive much material benefit (Meirison, 2014).

According to al-Qahthani, (Musfir Ibn 'Ali Ibn Muhammad al-Qahthani, 2010) Contemporary scholars have differing opinions regarding intellectual property rights (i.e., copyright). Below is a quotation on the opinions of contemporary scholars regarding intellectual property rights.

وهو من الحقوق التي لم يسبق فيها حكم للفقهاء الاوائل. وقد اختلف الفقهاء المعاصرون في حكمه بناء على اختلافهم في تحريجه وتكييفه ايضا: فمنهم من اثبت هذا الحق قياسا على المصنوعات لان الكتاب مؤلف مصنوع، ومنهم من خرجه قياسا على ما ورد في الفقه الحنفي بشأن (النزول عن الوظائف بمال). ومنهم من لم يثبت هذا الحق تحريجا على مصلحة ترويج الفكر الاسلامي وتحريره من كافة القيود.

*"The legal status of intellectual property rights is not found in the opinions of classical scholars. Contemporary scholars differ in their opinions regarding intellectual property rights from the aspects of classification and analogical reasoning (takhrij). Some argue that establishing intellectual property rights as the creator's property is based on qiyâs, which is the analogy between intellectual property and manufactured goods (things made by humans), since books or writings are created by their authors. Another opinion acknowledges intellectual property rights as the creator's property, with the basis of its takhrîj being the analogy to the permissibility of selling business premises (an-nuzûl 'an al-wadzâif bimâl) or selling trade routes, provided that the seller has the right to sell it. The next opinion is one that recognizes intellectual property rights as the creator's property, with the basis of its takhrîj being the maslahah in promoting Islamic thought and freeing it from all restrictions." (Putra, 2024).*

### 4. Conclusion

Fiqh classification or legal construction regarding intellectual property rights and copyright, where scholars view copyright, when analyzed with the concept of al-mâl, as one form of al-mâl that is transferable, valuable, and utilitarian. It is classified as al-mâl because copyright meets at least three criteria: it has qimah (value), it can be owned, and it can be

utilized. The fatwa commission of the Indonesian ulema council (mui) has determined that: (1) copyright is considered one of the property rights (huqûq al-mâliyât) that receives legal protection (mashûn) as wealth (mâl); (2) copyright protected by Islamic law is the copyright on creations that do not contradict Islamic law; (3) copyright can be made the object of a contract (ma'qûd alaih), whether a commercial or exchange contract (mu'âwadhat), or a non-commercial contract (tabarru'ât), and it can also be endowed (waqf) and inherited; (4) any form of violation of copyright, especially piracy, is an injustice and its ruling is haram. The method of determining the legal ruling in the mui fatwa regarding intellectual property rights uses four methods, namely: (1) takhrij furu' ala ushul; (2) mashlahah (public interest), (3) and sadd al-dzariah (active prevention to prevent actions that are prohibited).

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