

MORAL RIGHT IN ISLAMIC LAW

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Abstract

The issue of intellectual property rights concerns various aspects, as well as the generous (moral copyright) legal thoughts and legal regulations at the legislative situation within a short period of time. However, was this the right roots derived from the revealed legislation confiscation for centuries? Allah says in the Holy Qur'an: "Indeed, it is We who sent down the Qur'an and indeed, We will be its guardian" (Surat Al-Hijr verse 9). We should save Allah's Qur'an from every twist and modification, and the Qur'an sources of Islamic law. This is because it is eternity at every time and place. However, we reassure those who are tempted to doubt the greatness of this religion and its universality by providing infallible proofs.

The idea of this research is to establish the copyright moral rights in Islamic law, by taking the advantages and indications which is inspired by the Qur'an and the Sunna. Furthermore, we also considered sahaabah's (Prophet Muhammad companion) unparalleled effort in checking hadiths science, the attributes of the Prophet, the greatest proof of coverage, and the immortality of this religion which is Allah.

Keywords: Intellectual property, islamic law

1. Introduction

Islamic Sharia often results in either a positive or negative consequences. Intellectual effort is legitimate, and this gives the author the authority to include the meaning of the word "Right" (Al sayed R., *Protection of copyright and related rights under Syrian law on intellectual property*, for detail see WIPO/IPR/DAM/03/DOC.3).

The concept of Right (Abu El-Fadel J., 2003) has different meanings based on the perspective it is being considered from. Thus, the author will restrict himself to some of the meanings which serve as the content of this research. Consequently, right is a duty to be sure of. Right (in the terminology) is the competence of the law empowered under authority or commissioned by the author, and it has a value. One of these rights is

copyright known as moral right. Hence, a note of the terminological concept signifies the right to Islamic law (Babelli M., 2006).

Firstly, the requirement for the approval of the legislature for this jurisdiction to look at Sharia is the basis of this study. It is the establishment of the moral right of the author in the Islamic law based on sources. However, this is the content of the first section of this paper. Also, in this section, the researcher will address the nature of copyright in Islam as described by the legislative development and concept, together with the basis for this right.

Secondly, the author considers the right to authority and the right to property. In the second section of the paper, we would discuss the result of the nature of this right, which is entitled “The nature of the moral right in Sharia and its properties”.

However, we hope we have addressed this study on what is moral right in Islam and the comprehensive nature of the briefing.

2. Preamble

Some scholars believe that both the Financial and Moral rights of the author should be protected in Islamic law by Al-Jarrh and Al- Ta’deel science (Alnajjar A., 2000 p24). Thus, this was observed during the third Islamic era.

The researcher did not agree to the viewpoint that Islamic rules are derived from the Holy Qur’an and Sunna. Therefore, author rights should be protected through the Holy Qur’an and Sunna, which will be demonstrated through this study.

Sharia provisions are derived from the Holy Qur’an and Sunna. However, we must consider this right on the basis of the Qur’an before returning to the Sunna and the authors. Allah says “Recite in the name of your Lord who created man from a clinging substance. Recite, and your Lord is the most Generous- Who taught by the pen ‘(Surat Al-‘Alaq, verses 1-4). Anthropology Al-Alusi said that these (Sura Al-Alaq) was the first words of the Holy Qur’an (Al-Alusi M. 178 Ah, P. 3). Thus, he addressed Allah and Prophet Muhammad (peace be upon him) through the question: what are they reading? and what is the idea and proof of these verses?

Since reading is based on understanding what was written, writing is the main method of expressing what is in the mind or thoughts (Ibn Khaldun). Writing brings the author’s ideas into existence. Thus, the moral right of the author is often protected through writing.

Can one read without writing? Obviously, one cannot read without writing. Thus, writing reflect the physical appearance of the copyright moral, since writing is noted as a method to express what lies behind thoughts and

meanings; and the meanings of such ideas wandering in a sake columnist, expressed his moral copyright form.

Writing has a different interpretation to elaborate on the previous verses, (so that Allah created all things and does not make you incapable of reading) (Tantawi M., 1998, P453; Abu Ja'far T., p163).

From this point, we can establish that copyright moral embodied in writing has been referenced in the Qur'an, and Prophet Muhammad (Peace upon him) established a general rule in Islamic law. However, all of this is related to the importance of science and its place in Islam.

Islam is against lying falsely and promise punishment to those who lies falsely in the day of doom. Thus, the Holy Qur'an in many verses speaks against lying falsely saying: "Woe that Day, to the deniers" (verses 15,19,24,28,34,37,40,45,47,49, Surat Al-Mursalat). Also, it promised severe punishment to people who lie about Prophet Muhammad (Imam Ibn Alhjjaj M. 2005 P5).

All the novels and scholarly research span from the companions and their exploration of the narrators. All of this, points to the recognition of the moral right of the author to check a proposition of his companions.

3. The concept of the Moral right of the Author in Islamic law and its Elements

In order to access and clarify the meaning of the moral copyright, we will divide this section into two parts. In part 1, the copyright moral definition in Islamic law will be studied, while in part 2, the copyright moral elements in Islamic law will be discussed.

4.1. Definition of the Moral Right in Islamic law.

"The source of Islamic moral judgment is basically on etiquette and behavior. In the past, the cost of paper and ink and efforts in copying was been paid for, but not the creativity or effort of the scribes. Thus, the making of copyright in those ages does not carry any meaning beyond the competence of the owner, as praise earned rate is acceptable and the defamation is denied" (Ablouti M. 2001).

Prophet Muhammad (Peace be upon him) urged Muslims to unfurl the science, as all Muslims are required to notify and published Qur'an and Hadith to others who are not informed (Al-baghwi M. 1983. P289).

However, we can define the moral right as: "the author's effort in the classification of the functions of literary merit and respect". While retaining the right to modification and revision of this definition, we can draw elements constituting this right in the next section.

3.2. Elements of the Moral Right of the Author in Islamic law

The elements of moral right in Islamic law include the Right of publication and the Right of modification (Al-najjar A. Op.cit P53).

3.2.1. Right of Publication

The right to publication includes:

- The first district is a published content and that there is no law in the Islamic law that deny the author of his right to choose how he wants to publish the content.
- The second district regarding their right to bring his knowledge came into existence, but there are controls on Islamic law that prohibit this right. Allah says “Those who hide the clear verses and the guidance We have sent down after We have clarified them in the Book for the people shall be cursed by Allah, and cursed by the cursers” (Al-Baqarah, verse 159).

3.2.2. The Right of Amendment and Revision

In the right of amendment, the author enjoys the exclusive right to modify, change and amend his views. This right of modification could result from change in culture or environment, or what is more suitable to people. However, when Omar Ibn Alkhattab (The second Prince of Muslims) was asked by some people the reason he changed his view, He said: time and ideas changes (Al-Drami, Al-Okail K., 2004 p188).

4. The Nature of the Moral right of the Author and its Properties

Although we have noted the concept of the right to language and terms, we did not consider the type of right. In addition, we did not show the place of other rights. Thus since the aim of this study is to know the nature of the moral right of the author in Islamic law, we must address this concept in two fundamental issues:

First: In divisions in Islamic law, the property is on the use of money; and there is no doubt that physical objects can be acquired through the use of money. However, is it non-physical things (moral) that are subject to ownership? In order for us to answer this question, we must discuss this idea. Through the divisions of the rights, we can see how adapting Sharia will help us to determine the nature of the right. Thus, we will discuss this in the first part of this section.

Second: If we reach the first part of this section in ascertaining the nature of this right, the result that distinguishes it and that extends from the nature of the right, we will have a mechanism under part 2 of this section beside the characteristics of the moral right in Islamic Sharia.

5.1. Divisions of Rights in the Islamic Law

Islamic jurisprudence divides rights into several types according to the different considerations:

1. As the right holder: It is divided into three types:-
 - The right of Allah: This type of rights cuts across the nations and not to particular individuals.
 - Human right: This right is to an individual or specific group.
 - Common right: Right people have in common or have together.
2. As the supporting force: This right divides Muslim scholars as the binding force into two types. They are the right of judicial and religion rights (Al-Anzawi A.)
3. As an object: It is divided into two parts: personal right (as determined by the law of another person) and real right (which is determined by the law of a person towards a particular right) (Al-Asiri A. Op.cit P185).
4. As the nature of the object: It is divided into two; financial right and moral right.

Furthermore, Mohammed Al-bouti observed that moral rights are designed in an idiosyncratic term which corresponds to financial rights. The main right of the seller is to take the fee of the object he sold, while the main right of buyer is to take what he bought.

Beside the financial right which is applicable to tangible object, there is moral right which is applicable to intangible things such as the Right of pre-emption. The right to sue, the right of divorce, the right to paternity, and other rights related to human dignity is equivalent to financial rights. Thus, it emerges based on the viewpoint of Islamic Jurists (Al-Bouti M. Op.cit).

Al-bouti indicates various substantive points. He sees that the rights related to human dignity are moral rights, and the basis for the distinction of moral rights is the essence of the author's rights to be content. Therefore, the ratio of the workbook is a manifestation of respect for the dignity of the author. Given the copyright, moral right is distinct from financial rights and cannot be inserted.

We also find that this right is one of shared rights to suspend the right of the nation. Thus, Allah Almighty says” Those who hide the clear verses and the guidance We have sent down after We have clarified them in the Book for the people shall be cursed by Allah and cursed by the cursers” (Al-Baqarah verse 159).

Consequently, people have the right to suspend, allow the author's right to be in proportion with the non-aggression, and distort and misrepresent this clarification which is really common in Islamic law.

This right entails the supporting force on both sides, a religious side, as Allah says: "Are they equal, those who know and those who do not know? Only those with minds will remember" (Az-Zumar verse 8). The point of this verse is that Allah gives a place in the world for scientists, and distinguishes them from those who do not know.

Consequently, Islam has devoted religious penalty to those who violate this right as indicated earlier. Therefore, the assault on the workbook through misrepresentation or impersonation is a cruel lie forbidden in sharee'ah, because lying here is very bad (Al-Najjar. A Op.cit P.270). It might also be the penalty of the words of an owner; hence, this is legally punishable due to the theft of an author's thought without proper citation or referencing. This is so-called scientific theft or plagiarism (ibid. P269).

Penalties in Islamic Sharia also have a judicial side and it is discretionary. Hence, we can see that Islamic law recognizes moral rights as opposed to financial rights. Also, it recognizes the moral right in the ownership and his circle of properties as the ownership of the utility.

5. Characteristics of Islamic Law Copyright

We found through research on the nature of the right that moral right is the ownership in accordance with the concept of capacity service ownership in Islamic law. In addition, we found that it contains some things in common e.g. Allah and people, and include religious and judicial sanction. What are the characteristics that could be draw inspiration from nature? Here, we can derive the following properties of moral right:

- 1- **The right does not end with death:** Prophet Muhammad (peace be upon him) says: "When a human dies, his work would be cut-off except three things: ongoing charity or benefit, praying for forgiveness, and his usefulness and benefit to science" (narrated by Al-bukhaari). And this is evident in modern anthropology constant fare of death and the repeated moral right of the author, in the sense that this knowledge remains even after death. When an author dies, his work will continue. However, the continuity of this work means that his work was not cut-off and is an ongoing charity.
- 2- **The right of inheritance:** This property derives from the fact that this right is personal and proves to the author. Since the author right is intangible as well as his personal right (such as the right of name), so his personal right is not inherited.
- 3- **The right does not involve with prescription:** Nonprescription rule is derived from Islamic jurisprudence which is based on the rule of legality contained in the Hadith. Prophet Muhammad (peace and blessings of Allah) does not vitiate the right of

Muslim with the passage of time (Al-jbouri Y., 2003, P641). Consequently, an author has the right to be content so that this moral right can become outdated with the passage of time.

6. Conclusion

We have tried through this dedicated rooting of the moral right in the Islamic Shariah, since our revelation to master creation. Further, we adapted to the moral right of Islamic law, and discussed the nature of the right and the nature of the characteristics emphasized by the moral right of the author.

At the end of this research, it can only be said that immortality, coverage, and the greatness of this religion has a say to his companions. In addition, it protects them from any aggression (denatured or quotation) which constitutes theft of scientific thoughts of authors.

Dr. Fahmy M believed that the spirit that dominates the Islamic legislation refuses to acknowledge the rights of authors. However, the assassination of a work that is legal is rejected by Islamic Sharia law and by the words of the Prophet (do no harm).

7. References

- Abu El-Fadel J., Lessan Al-Arab, library.islamweb.net.2003.3
- Abu Ja'far al-Tabari, Jami statement on the interpretation of the Qur'an, knowledge House, Beirut, part (28-30)
- Al-Alusi M., The spirit of meanings in the Qur'an and the great seven disproportionately, 178 Ah
- Al-Anzawi A, Moral rights in Islamic law, Arabic document and its role in community service, intellectual property rights and methods of protection doctrine and law, published on the site <http://www.arabcin.net/arabic/nadweh/print>
- Al-baghawi Abu Mohammed, Explaining the Sunna, The Islamic office-Damascus, Beirut, 1983.
- Al- bouti M., A symposium on cultural and Social Center of the Dawa mosque in Paris from 13 to 14 January 2001, for the particular site <http://www.bouti.net/article.php>
- Al-jubouri Y., A brief explanation of the civil code, part II, House of culture, Oman 2003, p. 641
- Al-Okail K., Legal protection of patents, industrial designs, Arabic League for Security Sciences, the threshing machine and the search for Center, intellectual property rights, Riyadh, issue 336, 2004, p. 188.
- Al-qurtubi A., Li Ahkaam al-Qur'aan, modern House, Cairo, part I, 1, 1994, .
- Babelli M. A, Journal for monthly Darul Uloom Deoband, India. Motorcars 1427. Issue: 12, year: 30 Drami in his Sunan, Baab men left thing and change 1/162

Fahmy M., Moral rights in Islamic law, available on:

<http://www.barasy.com/index.php?name>

Hashanah S., Protection of copyright and related rights under Syrian law on intellectual property, available on: WIPO/IPR/DAM/03/DOC.3

Ibn Al-Hajjaj M. Sahih Muslim, scientific library, Beirut, Lebanon, first edition, 2005,

Tantawi M., The interpretation of the Quran, Egypt's Renaissance Center for printing and publishing, 1998 vol. XV

Zidane A., Entrance to study Islamic law institution message, Beirut.