

**ISLAMIC LAW AND COPYRIGHT IN ACADEMIC WORLD:
The Dynamic Debates between Privatization
and Distribution of Knowledge**

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Abstract:

The article explores copyright problem dynamic in a globalized academic world, especially in the Muslim worlds. The discussed issue in this paper is a conflict of interest between knowledge privatization and distribution, and its relation to the Islamic norms. This paper argues that the main problem of the concept is that the discourse is dominated by the idea of knowledge privatization by the publishers as capitalists, supported by the Government through the policy represented in Copyright law. This study finds that there are several movements emerged in response to the development of copyright law. At least, there are two stream movements; anti copyright movement and movement which demand copyright reform. By presenting examples of copyright resistance movements in the academic world such as Sci-Hub, Libgen, A2K movement, and some copyright experiences in the Muslim world, this article will be guided by Foucauldian genealogical discourse theory. This article confirms that the interests of publishers and academic interests are two things that are difficult to discuss in order to achieve a win win solution. While copyright laws favor the ruling interests of things, it does not fully effective in handling the legal cases on academic and non-profit matters. Besides, Islamic law has its own ambivalence to the copyright case. On the one hand, Islam advocates the widespread dissemination of knowledge, but on the other hand the Muslim worlds have to limit the spread of the sciences in accordance with the interests of intellectual property rights.

Keywords: *Intellectual Property right, Islam and copyright, privatization of knowledge*

Abstrak:

Artikel ini mencoba untuk menyelidiki dinamika permasalahan konsep hak cipta di dunia akademik global, khususnya di dunia Muslim. Isu yang didiskusikan dalam artikel ini adalah pertentangan kepentingan antara privatisasi ilmu pengetahuan, distribusi, dan hubungannya dengan nilai-nilai Islam. Artikel ini berpendapat bahwa konsep hak cipta didominasi oleh wacana privatisasi ilmu pengetahuan yang disuarakan oleh banyak penerbit, dan didukung oleh pemerintah melalui hukum hak cipta. Artikel ini menemukan bahwa terdapat beberapa gerakan yang muncul dalam merespon Perkembangan konsep dan hukum hak cipta di dunia akademik ini. Paling tidak, terdapat dua model gerakan; pertama gerakan anti terhadap hak cipta, dan kedua, gerakan yang menuntut reformasi hak cipta agar tidak selalu memihak pada kepentingan penerbit. Dengan menghadirkan contoh kasus-kasus gerakan perlawanan terhadap hak cipta di dunia akademik seperti Sci-Hub, Libgen, A2K movement, dan beberapa pengalaman hak cipta di dunia Muslim, artikel ini akan dipandu oleh teori analisis wacana Foucauldian. Hasil dari artikel ini menegaskan bahwa kepentingan penerbit dan kepentingan akademik adalah dua hal yang sulit untuk didiskusikan demi mencapai win win solution. Dalam kenyataannya, Hukum yang berkaitan dengan hak cipta memihak pada kepentingan yang berkuasa atas sesuatu. karenanya, hukum tidak sepenuhnya menyentuh ruang hak cipta pada hal-hal yang bersifat akademik dan non-profit. di samping itu, hukum Islam memiliki ambivalensi tersendiri terhadap kasus hak cipta. di satu sisi, Islam menganjurkan penyebaran ilmu seluas-luasnya, namun di sisi yang lain dunia Muslim harus membatasi penyebaran ilmu-ilmu pengetahuan sesuai dengan kepentingan hak kekayaan intelektual.

Kata kunci: *Hak kekayaan intelektual, Islam dan hak cipta, privatisasi ilmu pengetahuan.*

A. Introduction

Copyright is one of the evidences that prove the development of human civilization which always undergoes the dynamic changes. The concept of Copyright presents in response to the development of printing machine technology, when the books are easily printed and reproduced its lead to the possibility of plagiarism. Therefore, the regulation of copyright accommodates and protects human creativity from intellectual piracy of

plagiarism. By the concept of copyrights, human creativity continues to be produced without worrying of copyright piracy. In the 18th century, Copyright is used to monopolize the process of printing a book by an institution, whether government, publisher, or Church.¹ This phenomenon shows that copyright comes along with a tug of interest. Furthermore, copyright develops in such a way as to accommodate the creation of a work, such as books, songs and music. In the case of book publication, for instance, the author has his own copyright along with his published work without having register to the authoritative institution. The publisher and copyright holder has the right to reproduce and sell the published works, in accordance with the approved contract. However, the concept of copyright technically is not really a main discourse of copyright issues in the academic realm. This study talks about the problematics of the concept of copyright in the academic realm and its implementation, especially in Indonesia and other Muslim countries. In the one hand, the concept of copyright would protect human creativity, but unfortunately it could be the barrier to the access of scientific knowledge, in other hand.

By the copyright policy, the capitalization process of scientific product is easier to be institutionalized. In other words, a company which legally has ability to manage work with copyright could monopolize the creation, such as a publisher for selling and reproducing some intellectual opus. Several Scientific journals also have a similar way of working to publishers, which is monopolizing the management of creation. Certain people may have access to the latest scientific journals and academic papers with the expensive prize. At the same time, some people find it difficult to access some academic works because of expensive prize. The students, professors, and researcher in the top universities could find the easyness to access these “expensive works”. With the contrary, academicians in some universities, especially in the development countries, could find the difficulty to access the scientific journal and academic papers with expensive prize.

The problem of unbalance access to the expensive scientific works lead to the bigger problem in academic realm and publisher

¹ Charlotte Waelde, *Contemporary Intellectual Property: Law and Policy* (Oxford; New York: Oxford University Press, 2016), 34.

field. Thousands scholars try to access some paid journals through the “piracy website” for free namely *Sci-hub*. In addition to the *Sci-hub*, the next “piracy website” *Libgen* engtangled to piracy cases for providing copyrighted books and considered to the publisher loss. From these sites, some scholars do file-sharing by downloading books, journals and academic articles for free, because the site provides several scientific works, without having to go through the publisher paywall. The next piracy case is *Elsevier Publisher*, the modern publishing bussiness which has more than 15 offices all over the world, feels harmed bring this case to court in the United States. Elsevier wants the website owner (sci-hub) to pay as much as \$ 15 million, in return for the damages and losses. Alexandra Elbakyan, the creator of this site insists that the monopoly of science through the Copyright policy impedes the spreading of scientific development and limits academia, especially in the developing countries, to develop.²

Besides, the social movement that brings the open access knowledge has been mushrooming since the era of intellectual property began. One of the famous movements is Access to Knowledge Movement (A2K). This movement highlighted increasing imbalance between privatized knowledge (that which is controlled by the intellectual property rights holder) and the knowledge commons (that which is “owned” by the public). The most important attainment is to build the public awareness about the privatization of knowledge through the copyright. They also attempt for shifting the debate paradigm: away from “more intellectual property is better” to “sometimes less is more.”

This article attempts to explain the main issues in the discourse of the Copyright debate in the academic realm, between open and limited access, distribution and privatization of knowledge. Further, I try to explain how the proponents and the critics of copyright narate their argument in response to the discourse of public domain, open and limited access in the academic realm. The article describes some cases of “piracy website” such as *Sci-hub*, *libgen*, A2K movement. The websites and

²“Elsevier Wants \$15 Million Piracy Damages From Sci-Hub and Libgen,” *TorrentFreak* (blog), May 18, 2017, <https://torrentfreak.com/elsevier-wants-15-million-piracy-damages-from-sci-hub-and-libgen-170518/>.

the movement represent the counter discourse in response to copyright in the era of global capitalism.

The problem of copyright is not only occurs in the current empirical world. In the Islamic norms, sometimes the concept of glorifying copyright precisely produces a paradoxical attitude towards the process of disseminating scientific works in accordance with Islamic norms. Therefore, this article also seeks to present the concept of copyright from the Islamic perspective. The discussion about Islam and copyright are enriched by emphasizing the historical account of Muslim scholar in accordance with the copyright issues, and describing the experiences of the Muslim world in responding to the copyright.

The discourse of copyright is a global issue. In Indonesia, copyright has been discussed among Indonesian scholars; unfortunately, the discussion is not comprehensive yet. The development issues of the discussion of copyright just around the importance of copyright, implementation of copyright regulation, and copyright infringement. This article will enrich the earlier discussion on copyright which the conflict of interest among scholars, publishers and government occurred. Exactly, this article explores how the dynamic discussion on open access, limited access, science and knowledge dissemination, and privatization of science. Each group builds its opinions to influence more people and, especially, policy makers. How each camp builds its opinions is also the thing described in this article. Thus, this study is useful for copyright observers, scholars, and activists to see further how the social movements that challenge the copyright regulation establish their own discourse, which will be a critique of the concept of copyright.

In Indonesia, some scholars argue that the copyright regulation – which written on the statue Number 28 Year 2014 on Copyright act – does not explain explicitly and clearly about the handling on plagiarism case. Thus, the infringement of copyright act is often considered merely to be violetion of code of ethics. The copyright act still has a shortcoming in law enforcement even though it is a legal scheme of scientific ethics which protects the intellectual property right. The case of Yahya Muhaimin's book entitled "*Bisnis dan Politik: Kebijakan Ekonomi Indonesia 1950-1980*" could emphasize the problem. Yahya Muhaimin's book

allegedly is a plagiarism work because some unwritten references in citation notes. But, this case was not handling in the courts.³ Indeed, in the past years after the revision of the copyright Act in 2014, the law enforcement of copyright policy is not effective enough to be implemented in academic realm, especially in the case of academic papers, books and traditional folklore heritage.⁴

In another study about the intellectual property right, Simon Butt argues that although Indonesia has been developing the copyright policy significantly since the 90s, many factors that contradicted the fundamental aspects of intellectual property right, such as economic, social, cultural, and legal factors. The finding of Butt's Research reveal that in this phase, Indonesia's desire to protect intellectual property right was not supported by good measures as per the TRIPS (Trade Related Aspect of Intellectual Property) standard.⁵ This opinion is evidenced by the many cases of copyright infringement in Indonesia, such as the sale of pirated VCD / DVD, the use of certain web to download music illegally.

As an attempt to minimize the copyright infringement, Riswandi offers a collaborative model between law and technology in order to protect copyright through the internet or internet-based copyright protection. The fact that the development of internet technology brings some negative implications is inevitable, thus, an appropriate method to minimalize the copyright infringement is using model legal and technological collaboration. If law and technology are separated in the handling of this case, it will be difficult to resolve.⁶ In his other studies, Riswandi argues that there has been disharmony of copyright law in Indonesia due to the agreement between Indonesia and World Trade Organization (WTO), which the state has to implement the TRIPS agreement. Riswandi also indicates, according to the circumstance of

³ Moh. Mahfud Md, "Pewadahan Etika Keilmuan Di Dalam UU Hak Cipta," *Jurnal Hukum IUS QUIA IUSTUM* 6, no. 12 (September 16, 1999): 31-45, <https://doi.org/10.20885/iustum.vol6.iss12.art3>.

⁴ Emma Valentina Teresha Senewe, "Efektifitas Pengaturan Hukum Hak Cipta Dalam Melindungi Karya Seni Tradisional Daerah," *Jurnal LPPM Nidang EkoSosBudKam* 2, no. 2 (2015).

⁵ Simon Butt, "Intellectual Property in Indonesia: A Problematic Legal Transplant," SSRN Scholarly Paper (Rochester, NY: Social Science Research Network, May 8, 2009), <https://papers.ssrn.com/abstract=1401093>.

⁶ Budi Agus Riswandi, "Hukum Dan Teknologi: Model Kolaborasi Hukum Dan Teknologi Dalam Kerangka Perlindungan Hak Cipta Di Internet," *Jurnal Hukum IUS QUIA IUSTUM* 23, no. 3 (2017): 345-367.

international politics, the existence of copyright law in Indonesia is more dominated by foreign interests than the national interest.⁷

Dealing the intellectual property right with the virtual world, Mastromatteo presents the characteristic of *Schi-hub* as a website which caused approximately 51 million copies of scientific articles copied from commercial publishers illegally. He observes that this website is a critic to the concept of copyright and represents the virtual movement for demanding open access to knowledge and scientific works. By taking case in Latin America, the study about copyright and Schi-Hub websites replicates an analysis published in *Science* using its available usage data, but limiting it to Latin America, and presents implications caused by this site for information professionals, universities and libraries.⁸

This article is a study of discourse using Foucauld genealogy method. The focus of this article is to look at the dynamics of the debate of discourse on copyright, by its actors, such as the movement of social open access movement. Using genealogy we can see how one group produces discourse to influence other groups, as Arribas-Ayllon points out in the Foucauldian Discourse Analysis.⁹ The analysis of this study is based on data which collected through several media on the internet such as Sci-Hub and Libgen website, Youtube, Elsevier publishing case to Sci-Hub and Libgen and his review in several media such as Newyork Times.¹⁰

B. Privatization of Knowledge

Looking at the dynamic discussion about the intellectual property right and the emergence of social movement which criticize the concept of copyright lead to the question “what is the

⁷ “Politik Hukum Hak Cipta: Meletakkan Kepentingan Nasional Untuk Tujuan Global | Riswandi | Jurnal Hukum IUS QUIA IUSTUM,” accessed August 22, 2017, <http://jurnal.uui.ac.id/index.php/IUSTUM/article/view/5009/4441>.

⁸ Juan D. Machin-Mastromatteo, Alejandro Uribe-Tirado, and Maria E. Romero-Ortiz, “Piracy of Scientific Papers in Latin America: An Analysis of Sci-Hub Usage Data,” *Information Development* 32, no. 5 (November 1, 2016): 1806–14, <https://doi.org/10.1177/0266666916671080>.

⁹ Michael Arribas-Ayllon and Valerie Walkerdine, “Foucauldian Discourse Analysis,” in *The Sage Handbook of Qualitative Research in Psychology*, ed. Carla Willig and Wendy Stainton-Rogers (London: Sage, 2008), 91–108, <http://orca.cf.ac.uk/24763/>.

¹⁰ Lisa M Given, *The Sage Encyclopedia of Qualitative Research Methods* (Los Angeles, Calif.: Sage, 2008), 249.

real problem of the concept of copyright” Hereby, I assume the fundamental problem that ultimately led to the emergence of community responses through social movements, such as Acces to Knowlede (A2K), is the privatization of Knowledge that is represented by the Copyright Act. Privatization could be arranged by publishers by capitalizing the scientific works through books, paid scintific journals and academic papers. In this section, I would present the main problem of copyright in the academic world in the era of global capitalism, namely privatization of knowledge and how privatization may works.

As mentioned in the preceding paragraph that a paid scientific journal is a representation of the privatization of knowledge by the publisher. If someone wants to access the knowledge in a academic works - whose copyright is managed by the publisher of the paid scientific journal - then he has to pay through the paywall of the journal. Only certain people can pay the journal, because for some scholars, especially in the “third world”, the expensive price is become a constraint for accesing journal. For those who are in the top universities, they may be able to have some access to paid academic journal because several top universities usually subscribe the famous paid-journals. These problems can be felt by many scholars in the third world such as Elbakyan. When Elbakyan was a Master student, she need a relevant article which available in paid-journal. Thus, the a software developer and neurotechnology researcher from Kazakhstan had developed a piracy website with the capabality in providing free access to the paid-journal. These privatization and monopoly narratives of science are also the fundamental reason for her to critisize the concept of copyright. The result of scientific works should be disseminated, not to be privatized, because it is very important for the world development. Her stated goal is to help spread knowledge by allowing more people to access otherwise paywalled content.¹¹

How the privatization of science is perpetuated? This is the next question that needs to be answered. The first instrument to perpetuate such privatization is the copyright law, which regulates

¹¹ “Alexandra Elbakyan – Science Should Be Open to All Not Behind Paywalls |,” accessed August 24, 2017, <http://www.leafscience.org/alexandra-elbakyan/>.

who has the right to manage and gain economic and moral rights. Every author of scientific works has his own copyright which includes the moral and economic rights when his work is published. Furthermore, according to the agreement of publishing, copyright holders may print out, reproduce, and publish commercially their work through the publisher as the authoritative agency to manage the copyrighted scientific work. Anyone outside the publisher authority is prohibited for copying the work, it will be considered as a piracy and illegally files sharing.¹² The copyright infringements are covered in international law such *Berne Convention for the Protection of Literary and Artistic Works*. The Berne Convention, adopted in 1886, deals with the protection of works and the rights of their authors. It provides creators such as musicians, poets, painters and also authors. The main goal of this convention was to control how their works are used, by whom, and on what terms. It is based on three basic principles and contains a series of provisions determining the minimum protection to be granted, as well as special provisions available to developing countries that want to make use of them. Furthermore, the Berne Convention is ratified by some countries which or organized in the WIPO (World Intellectual Property Organization). Through the organization of this science, no matter how important the contribution of science to the development of human civilization, if it is disseminated and developed through a “disagreed path” then a dissemination of science is considered a criminal. Thus, copyright law also makes a science is not "open" for the wider community.

It is probably hard to say that the copyright law is purely for the public interest rather than economic interest of some publishers. The publisher's interest could be accommodated by the policy makers, in this case the government, through the production and reproduction of copyright discourse, one of which by legislating the law. Finally, groups with power relations can produce the discourse of scientific works and and dominate it. The

¹² “Undang-Undang Nomor 28 Tahun 2014,” [hukumonline.com/pusatdata](http://www.hukumonline.com/pusatdata), accessed August 22, 2017, <http://www.hukumonline.com/pusatdata/detail/lt5460681737444/node/14/u-u-no-28-tahun-2014-hak-cipta> article 8-9. see also “WIPO-Administered Treaties: Berne Convention for the Protection of Literary and Artistic Works,” accessed September 4, 2017, http://www.wipo.int/wipolex/en/treaties/text.jsp?file_id=283698 article 9.

power relations that can be seen in this context are; the publisher (capitalist) in cooperation with the government produces unprofitable discourse for people who do not have more money to access paid journals. The explanation power relation in the copyright law seems like the the theory of conflict, which is the gap between the bourgeoisie and the proletariat.¹³ However, I aware that Marx's class conflict theory is not entirely relevant to this copyright matter, since there are ambiguously things if we regard the case as a class conflict between the bourgeoisie and the proletariat. Many scholars are actually able to access the journal, but support open access journal to avoid the privatization of science, and support the development of science. What makes this case related to the Marx's theory is only that there is opposition to the privatization of science and capitalism and its system in the academic world. However, we really could not claim that the opposing group is the proletariat.

The opinion set by the publisher is that copyright law protects creativity and contributes to the production of qualified scientific writing. By publisher management of copyright, some publishers implement the rigorous editing and proofreading process for improving content, clarity, structure, substance, checking the inconsistencies, spelling, grammar and punctuatuion errors, formatting mistakes and typos. This is the method that they arugued as an effort to make qualified publication of scientific work. This argument is the claim from the publishers in the promoting of public interest.¹⁴ Non-mainstream groups would oppose to the dominant discourse of the copyright law and bring the discourse back by promoting the new opposition discourse against privatization of scientific works. The consequence of spreading the opposition discourse is the emergence of such; A2K movement, Sci-Hub, and LibGen which try to raise public awareness about the importance of open access.

¹³Edward Andrew, "Class in Itself and Class Against Capital: Karl Marx and His Classifiers," *Canadian Journal of Political Science/Revue Canadienne de Science Politique* 16, no. 3 (September 1983): 577-84, <https://doi.org/10.1017/S0008423900023994>.

¹⁴Kevin Madigan, "Judgment Against Sci-Hub Is a Win for Authors and Publishers," *Center for the Protection of Intellectual Property* (blog), June 27, 2017, <https://cpip.gmu.edu/2017/06/27/judgment-against-sci-hub-is-a-win-for-authors-and-publishers/>.

C. Copyright Law: The Public interest or Publishers Interest?

Looking at the basic argument about the public interest of prominent and critic groups, it is necessary to analyse on what the meaning of “public interest”. Does the meaning of public interest is delimitation of scientific work distribution? Could the scientific work still be qualified even if it is provided in open access journal? Could it go through a good editing process and openly published? Actually I have paradoxical paradigm about the copyright. Int one hand, I argue argue that knowledge distribution should be equally distributed, but in other hand copying scientific article illegally also regarded in violations of the Copyright law.

Indeed, the case of copyright in the academic realm is different from the other field, for example in the field of music. In the academic realm, as long as the work is not indicate in the plagiarism case, which also violates the academic code of ethics, many famous scholars publish their work in open access journal or even in certain cases in their Academia and Research Gate accounts. It means the case of reproducing and distributing scientific work under the Copyright Act is an irrelevant offense in the academic world. One interesting fact in Elsevier's case against Elbakyan is that none of his writers whose work was taken through Sci-Hub protested the activity, some scholars agreed with the open acces system instead. If we compare with the issue of copyright in the other fields – like music, commercial product and company logo, or movie industry – where creators receive money from each copy sold, we can see the different clearly; that the copyright is protecting the financial benefit of the creator. The dissemination of scientific publication is not merely talking about the “bussiness of publication”. Moreover, publishers don’t pay for the volunteer peer reviewers or editors. But they charge those same researchers, reviewers and editors, not to mention the public, whose tax dollars most likely funded the study in the first place, to read the resulting articles.¹⁵

D. Challenge against Dominant Discourse

¹⁵ Kate Murphy, “Opinion | Should All Research Papers Be Free?,” *The New York Times*, March 12, 2016, sec. Opinion, <https://www.nytimes.com/2016/03/13/opinion/sunday/should-all-research-papers-be-free.html>.

In the Foucauldian paradigm, there have been always dominant and non-dominant actors in any discourses for knowledge production. The actors may determine which part can influence others. The dominant actors are usually those with power relations, while those who do not have it will be difficult to win a discourse contestation. However, there also have been always some groups to fight for the dominant discourse and participate to determine where the discourse is directed. In the issue of copyright, there are groups that have power relationships such as publishers, while anti-copyright social movements or those that offer copyright reform are groups that are still struggling to influence policy makers. The “Piracy sites” which created by individuals as a challenge to copyright policy also become a part of groups that try to influence the discourse direction of copyright, public domain and open access.

1. Sci-hub dan Libgen

Defining it self as “*piracy site*”, *Sci-Hub* had an average of 80,000 visitors per day before its previous domain was blocked. *Sci-Hub* downloads articles by aping university IP addresses and stores them in a repository that now contains more than 46 million papers. *Sci-Hub* was founded by Kazakhstani graduate student Alexandra Elbakyan in 2011, as a reaction to the high cost of research papers behind paywalls, typically US\$30 each when bought on a per-paper basis. In the website, there are three main ideas why *Sci-Hub* had established as a “*piracy website*”.

The first is for promoting knowledge to all. *Sci-Hub* fights inequality in knowledge access across the world. The scientific knowledge should be available for every person regardless of their income, social status, and geographical location. *Sci-Hub* mission is to remove any barrier which impeding the widest possible distribution of knowledge in human society. The second, *Sci-Hub* tries to against the copyright law. *Sci-Hub* advocates for cancellation of intellectual property, or copyright laws, for scientific and educational resources. Copyright laws render the operation of most online libraries illegal. Hence many people are deprived from knowledge, while at the same time allowing rightholders to have huge benefits from this. The copyright fosters increase of both informational and economical inequality.

The third, Sci-Hub project supports Open Access movement in science. Research should be published in open access, and be free to read. The Open Access is a new and advanced form of scientific communication, which is going to replace outdated subscription models. We stand against unfair gain that publishers collect by creating limits to knowledge distribution.¹⁶

Other pirate services, including Libgen, which also allows users to freely download audiobooks, and BookFi, a free repository of more than 2 million books, have also resurfaced on different Internet domains. As a consequence, A New York district court ruled on 28 October 2015 that online services such as Sci-Hub and the Library Genesis Project (Libgen) violate United State copyright law and US court orders shutdown the site. The court ruled in favour of academic publisher Elsevier, which in June filed a complaint against the main operators of the sites for unlawfully accessing and distributing its copyrighted papers. There are at least 100 articles submitted to Court by Elsevier Publisher, as evidence, which has been stolen by Sci-Hub and LibGen. Elsevier Publisher claimed a loss of 15 million Dollars. However, the fact that Elbakyan is a foreigner and has no assets in the United States, so there is no simple way for the United States government to collect the fines.¹⁷

In respon to the indictment, Elbakyan persists that she not going to stop spreading the knowledge. She also hopes that the case will raise awareness of a lack of access to relevant literature faced by many scientists. Elbakyan also considers that distributing scientific work is a different matter by stealing music on the internet. In fact he sent a letter to Elsevier saying that the publisher had exploited the researcher and closed the public access to knowledge. Thus, making open scientific work is a public interest.¹⁸

¹⁶ "Sci-Hub: Removing Barriers in the Way of Science," accessed April 6, 2018, <https://sci-hub.tw/>.

¹⁷Quirin Schiermeier, "US Court Grants Elsevier Millions in Damages from Sci-Hub," *Nature News*, accessed August 23, 2017, <https://doi.org/10.1038/nature.2017.22196>.

¹⁸"Court Orders Shutdown of Libgen, Bookfi and Sci-Hub," *TorrentFreak* (blog), November 2, 2015, <https://torrentfreak.com/court-orders-shutdown-of-libgen-bookfi-and-sci-hub-151102/>. Lihat juga Schiermeier, "US Court Grants Elsevier Millions in Damages from Sci-Hub."

Tom Allen, the president of the Association of American Publishers (AAP), warned that in addition to the lost revenues to authors and publishers, pirating scholarly materials has a harmful effect on the quality of scientific publications and public health. He explained:¹⁹

Scholarly publishers work to ensure the accuracy of the scientific record by issuing corrections and revisions to research findings as needed; Libgen typically does not. As a result, its repository of illegally obtained content poses a threat to both quality journal publishing and to public health and safety.

As well as opposition groups and prosecutors of Copyright reform, its supporters also base their support for the public interest, that the public needs a qualified publication of scientific work after going through the editing process by the publisher. By the emergence of the piracy site the strict editing and reviewing process is ignored and less appreciated. Thus, Copyright Law is very important for the development of science and development of society. The following narratives can be found on the web of the Center for the Protection of Intellectual Property, as one of the supporting groups of copyright law.²⁰

2. Access to Knowledge (A2K)

The Access to Knowledge (A2K) movement is a collective action of civil society groups, governments, and individuals converging on the idea that access to knowledge should be linked to fundamental principles of justice, freedom, and economic development. The movement was reflected the goals of The Berlin Declaration on Open Access to Knowledge in the Sciences and Humanities in Germany 2003. This movement emphasize that Knowledge is essential for so many human activities and values, including freedom, the exercise of political power, and economic, social and personal development. The A2k Movement concerns its movement to the copyright law which can impact the dissemination of knowledge. The paradigm that is established by this movement is to give awareness that

¹⁹Madigan, "Judgment Against Sci-Hub Is a Win for Authors and Publishers."

²⁰Madigan.

knowledge is fundamentally different from physical good, product or service. The knowledge can be copied; it can also be shared because it does not have to be scarce.²¹

The “open Access” movements are varying in any forms. In the case of Sci-Hub and LibGen, they have been trying to break a copyright paradigm by facilitating the society all paid-academic works for free. In the In the other case, Directory of Open Access Journals (DOAJ) emergeto lists open access journals and is maintained by Infrastructure Services for Open Access. The Directory of Open Access Journals was launched in 2003 at Lund University, Sweden, with 300 open access journals and today contains ca. 10000 open access journals covering all areas of science, technology, medicine, social science and humanities. DOAJ's mission is to increase the visibility, accessibility, reputation, usage and impact of quality, peer-reviewed, open access scholarly research journals globally, regardless of discipline, geography or language. DOAJ will work with editors, publishers and journal owners to help them understand the value of best practice publishing and standards and apply those to their own operations. DOAJ is committed to being 100% independent and maintaining all of its services and metadata as free to use or reuse for everyone. In Indonesia, important ties between Indonesia and DOAJ have now been established for DOAJ Consortium. Furthermore, three new Ambassadors have been appointed; Dian Eka Indriani (STKIP Bangkalan Madura), Sudarman Samidi (Universitas Krisnadwipayana), and Haris Rosdianto. From 1st September 2017, the Ambassadors will start working on promoting DOAJ's practices and standards, and Best Practices in Open Access publishing. This work has two goals: to improve the quality of Indonesia's open access journals and to improve the quality of the applications submitted to DOAJ.²²

²¹ Fredrick Noronha, *Access to Knowledge: A Guide for Everyone* (Consumers International, 2010).

²²DOAJ, “Directory of Open Access Journals,” accessed August 30, 2017, <https://doaj.org>.

E. Copyrights and Islamic Norms

In classical Islamic literature, the term Copyright or Intellectual Property Rights is never explicitly discussed. However, a similar study to the Copyright discussion can be traced back from the earlier classical Muslim Scholars. The Appreciation of intellectual property right can be found implicitly from various verses of the Qur'an. In the *Surah as-Syura* verse 183 affirms that man should not undermine other human rights that may cause harm. Because of the great appreciation of the Quran to the copyright matter, then the violation against copyright may be subjected to strict punishment. As the copyright law in Islam, the application of sanctions against copyright infringement also could not be found explicitly in the Qur'an. However, there is still an interpretive space to look for copyright infringement laws. For instance, we can easily analogize copyright infringement against the theft laws in Islam (*sariqah*). If this copyright infringement is analogous to theft, then the Quran speaks clearly about it. Theft is one of the criminal offenses whose punishment is directly mentioned in the Quran; cutting off hands.

In the history of classical Islamic literature, Muslims recognize the method to legitimate the rolling of Muhammad prophetic tradition (*hadits*) to the next Companions (*shahābah*) through a link that connects one narator to another which called by *sanad*. In other word, the *sanad* is the information provided regarding the route by which the *matn* has been reached. The method of transmitting hadith has become an illustration that in essence, earlier Muslim scholars have paid important attention to one's rights in order to avoid misappropriation of right.

In other cases, copyright infringement has also occurred during the era of Abasyiah caliphate. Imam Suyuthi, a prominent Muslim scholar, once authored a book entitled *al-Fāriq baina al-Mushanif wa al-Syāriq*, the book was composed in reaction to the man who has claimed as a writer of two articles of Imam Suyuti entitled "*al-Mu'jizāt and al-Khashāish*". The book is described some indicators which prove that the claimed book from the plagiarist is the result of Suyuti's work for many years. The plagiarist lived in the same age when the Imam Suyuthi lived. In the age whe Imam Suyuthi lived, there is no specific law that guarantees the copyright of creator works. The plagiarist of Imam Suyuthi's work is

suspected to have a copy of Imam Suyuti's writing from his close students.²³

In other discussions, some opinions from modern Muslim scholars show their support for copyright. Wahbah Zuhaili argues that copyright matter concerns with the right of authorship (*haq al-ta'lif*) which is discussed in contemporary fiqh. The right of authorship (*haq al-ta'lif*) is a right which not merely guaranteed by positive law from any infringement, but also protected by sharia law. Thus, reprinting or adapting a work without the author's permission is a violation and a crime against the author's right that considered as a sin in the sharia's perspective.²⁴

The issue of copyright in the perspective of Islamic law is ambivalence when it is associated with the dissemination of esoteric religious knowledge. As discussed in the previous paragraph, there are two ambivalent interests; whether copyright protects the author's interests (in the case of scientific publications) or defends corporate interests that seek to benefit from author's work. In Islamic ethics, the spread of religious knowledge is a necessity for every Muslims. Anyone who teach an Islamic knowledge will be judged as *sadaqah* (alms). According to the hadits of Prophet Muhammad SAW narrated by Ibn Majah that the most important alms for Muslim is sharing the Islamic knowledges to other Muslims. Besides emphasizing the necessity of copyright matter, Islam threatens Muslim scholars who hide their knowledge for other.

F. Copyright Issues in the Muslim Worlds

In the global context, the concept of copyright could be traced back since the 15th century in the western countries. Copyright has just intensely discussed become the positive law after *Bern Convention for the protection of artistic and literary works* in the 19th century.²⁵ The first Muslim country ratifying the regulation on Intellectual Property Right is Egypt. Egypt has legalized the regulataion on Rights Trade (1939) and then the

²³ Jalāluddīn al-Suyūthi, *Al-Fāriq Baina Al-Mushānif Wa Al-Syāriq*, 1st ed. (Cairo: Ālim al-Kutub, 1998).

²⁴ Wahbah Al-Zuhailiy, *Al-Fiqh Al-Islāmiy Wa Adillatuh*, vol. 3 (Damaskus: Dār al-Fikr, 1989).

²⁵ Ronan Deazley, Martin Kretschmer, and Lionel Bently, *Privilege and Property: Essays on the History of Copyright* (UK&US: Open Book Publishers, 2010), 3.

regulation on Copyright in 1954.²⁶ The policy on the implementation of this copyright in Egypt was followed by Gulf Arabic countries who had just started copyright rules by the late 1990s. Arab civilization and societies have inspired rich and highly diversified literacy, artistic and scientific works in various forms. The Arab Muslim countries – which famous by their civilization and heritage of literacy in the past decades – like Jordan, Egypt Lebanon, Morocco and Tunisia all have great potential for promoting the economic development.²⁷

Indonesia as the largest Muslim population country regulates the issue of copyright in the Copyright Act (Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta) by the support of a fatwa from Majelis Ulama Indonesia (MUI, Indonesian Ulama Council) as the religious authoritative institutions. Actually, the copyright regulation in Indonesia has been started since the colonial era by *The Auterswet Staatsblad Number 600 Year 1912* which applies in Indonesia for approximately 69 years. In 1982, the regulation of *Auterswet Staatsblad 1912* was revoked by the Indonesian government and stipulated a new regulation by *Law Number 28 Year 2014 on Copyright*. Furthermore, the Copyright Act of 1982 was revised several times; Law Number 7 Year 1987; Law Number 12 Year 1997; Law Number 19 Year 2002. Today, the latest Copyright act is the Law Number 28 Year 2014 on Copyright. There are several important point changes in which there are additional articles that copyright can be transferred with a *waqf*; copyright is an intangible moving object that can be guaranteed by fiduciary assurance, and there are two main right of copyright, namely moral rights and economic rights.

According to the serial case on copyright regulations, it appear that the fatwa on copyright is issued as a religious legitimacy against Law Number 19 Year 2002 on copyright. The reformation turns out to bring the discourse of rights not only to the field of human rights, but also in the field of copyright which is the intellectual work of human being. The fatwa emphasizes that copyright is regarded as *huqūq maliyah* (property rights) which is protected by Islamic law as well as *māl* (wealth). Copyright could be

²⁶ USA International Business Publications, *Middle East and Arabic Countries Copyright Law Handbook* (Int'l Business Publications, 2007).

²⁷ *Performance of Copyright Industries in Selected Arab Countries: Egypt, Jordan, Lebanon, Morocco, Tunisia* (WIPO, 2003).

the object of the contract (*al-ma'qūd 'alaihī*), either *akad mu'awadhah* (commercial exchange) or *akad tabarru'at* (non-commercial). Copyright also could be represented and inherited. This fatwa also emphasizes that copyright infringement is a crime in Islamic law. As the legal system in Indonesia, the MUI is one of the authoritative institutions for the religiousness of Indonesian Muslims, nevertheless the fatwa of MUI is not a binding rule. The phenomenon of the copyright fatwa adequately describes the religious-state relations in Indonesia. As a representation of the state's Islamic institution, the MUI becomes a forum for moral support for all state programs as long as the program has not contradictory norms to the Islamic values.

G. Conclusion

The regulation on copyright considered as an obstacle for the dissemination of knowledge and scientific works. The concept of copyright is in line with the development of commercialization which makes the dissemination of knowledge become privatized. The privatization in this case is become the crucial problem that gave emerge the opposition group to copyright. Some of the groups give the protest against the regulation on copyright with soft power by collecting some supporters who in the same idea; challenging the privatization of knowledge. Some of them make the rejection by providing the paid-journals become accessible to download for free.

The privatization of science as a problem in the concept and implementation of copyright has been perpetuated and represented by government policy through strict law, the Copyright Act. The law regulates the handling of infringement which in the academic context becomes problematic for many scholars. The law prohibits the taking and distributing of scientific works without permission. On the other hand, many authors also do not mind his work being read and taken for the benefit of the development of science. Instead they write to read and disseminate. Thus, A2K, and DOAJ communities were formed, in which some scholars and activists published scientific papers openly accessed.

Challenging this policy, some groups present to compensate for the existing discourse on copyright law. The challenging groups feel that they need to build power. In this context, Publishers, governments, and groups that support copyright law are those close with power relations. Other groups such as A2K, DOAJ,

Elbakyan – with her Sci-Hub –, and Libgen are those who struggle to produce counter discourse and build their own power relations to influence policy on the concept of copyright. There are two counter discourses to challenge the copyright issue; reforming copyright law or rejecting the concept of copyright at all.

Copyright as a concept to protect creativity and intellectuality has accompanied the history of the development of human civilization. In Islamic context, Islam as a religion that emerge in the midst of the development of human civilization, also respond to the discourse of copyright explicitly in the source of the law; al-Quran and hadits. Various interpretations from several classical and modern scholars place great emphasis on the protection of copyright especially in the field of science. The experience of the Muslim worlds that make regulation on copyright confirms that the Muslim world is in line with the spirit of copyright protection. However, the application of copyright regulation seems to be attitude ambivalence when confronted with Islamic norms regarding the dissemination of Islamic knowledge in Islam Islam emphasizes the protection of copyright on the results of an academic work and not on the process of its dissemination. Some contemporary Muslim scholars relate the concept of copyright to the protection of property (*hifzu al-māl*) that is a fundamental right for Muslims and an important discussion of Islamic legal philosophy. The efforts of contemporary Muslim scholars certainly minimize the assumption of ambivalence between copyright and the dissemination of Islamic knowledge in Islam.

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