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Fiqh Punishment and Copyright Infringement: Reassessing Islamic Criminal Law on Intellectual Property Crimes

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Abstract

Although foundational principles such as protection of property (*ḥifẓ al-māl*) and the right to justice (*ḥaqq al-ʻadālah*) are well established within Islamic legal discourse, significant ambiguity persists regarding the classification of intellectual property rights violations in contemporary era. This study seeks to critically re-examine the notion of discretionary punishments (*taʻzīr*) and reconsider appropriate sanctions for individuals involved in intellectual property crimes. It articulates the principles of Islamic criminal sanctions in relation to copyright, understood as legitimate authorship rights (*ḥaqq al-taʼlīf*). This study discursively reconceptualizes piracy not only as intellectual theft (*sariqah fikriyyah*) but also as a violation of protection of property and sanctity of creative work (*ḥurmah al-ʻamal al-ibdāʻī*). The findings indicate that the multifaceted issues related to intellectual rights are influenced by economic factors, technological advancements, and a widespread culture of copying rights, which compromises both the moral and economic rights of creators. This study argues that Islamic legal discourse has substantive implications for reformulating the criminal sanction system related to copyright offenses, thereby rendering it more quantifiable and responsive to the contextual needs of the public interest (*maṣlaḥah ʻāmmah*). This study contributes to the global discourse on intellectual property governance by demonstrating the continuing relevance of Islamic criminal law in addressing contemporary challenges posed by the expanding digital economy.

Keywords
fiqh punishment; copyright infringement; authorship rights; knowledge production; intellectual property crimes; Islamic criminal law

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Introduction

The advancement of printing technology has encountered a number of significant challenges related to the prevention and protection of intellectual property rights. This issue is closely linked to the processes of creation, publication, distribution, and utilization of scholarly works on a global scale.[1] As a consequence, the dissemination of scientific papers, as an innovation in intellectual property within digital technology, has evolved without proper oversight, particularly in cases of copyright

[1] Tabrez Y Ebrahim, "Intellectual Property Through a Non-Western Lens: Patents in Islamic Law," *Georgia State University Law Review* 37, no. 3 (2021): 789–903; Nadia Naim and Noor Suhaida Kasri, "Intellectual Property and Islamic Finance: Opportunities and Challenges for a New Islamic Intellectual Property Finance Framework," *Thunderbird International Business Review* 67, no. 3 (2025): 395–412.

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infringement.[2] Machin-Mastromatteo et al.[3] record that Sci-Hub and The Library Genesis Project (LibGen) have been downloaded scientific papers more than 51,000,000 in 2020. Data is considered a form of copyright infringement when users download it without payment, whereas publishers require payment for access.[4]

Intellectual property is governed by the Bern Convention,[5] which addresses moral rights; however, it still presents challenges regarding non-economic aspects such as attribution and integrity. This framework raises conceptual uncertainties within the Islamic context, particularly concerning the alignment of moral rights with *ḥuqūq al-ādamiyyīn* (individual rights) and *ḥuqūq Allāh* (divine rights), which are grounded in the principles of *māl* (ownership), *'adl* (justice), and *maṣlaḥah* (public interest). This scholarly issue also incites discussion regarding the framework of fiqh punishment, as classical Islamic law (including *ḥudūd*, *qiṣāṣ*, and *ta'zīr*) is primarily concerned with offenses such as theft, *zinā*, apostasy, and the consumption of alcohol (*khamr*),[6] rather than specific infringements related to intellectual property. Consequently, this study aims to investigate whether intellectual property offenses can be classified as *ta'zīr* and to analyze the jurisprudential criteria within the context of fiqh punishment.

From the existing studies on the intersection of Islamic law and intellectual property crime, the authors can identify four academic discourses. First of all, numerous studies have focused on the conceptual legitimization of intellectual property in Islam through the maqasid sharia approach, which considers the protection of property as a fundamental purpose of Islamic jurisprudence.[7] Secondly, some studies have attempted to apply the analogical method (*qiyās*) to draw comparisons between tangible and intellectual properties; however, there are limitations in discussing the mechanisms of criminal punishment from the perspective of Islamic jurisprudence.[8] Thirdly, there are constraints on examining

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[2] Rahi Ajabe-Alhat et al., "Intellectual Property Rights in the Digital Era: Exploring the Legal Aspects of Copyright in the Context of Digital Content Sharing and Online Platform," *Journal of Ecohumanism* 3, no. 8 (2024): 7668–75.

[3] 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 (2016): 1806–14.

[4] Alexandra Elbakyan and John Bohannon, "Data From: Who's Downloading Pirated Papers? Everyone," (Dryad, 22 April 2017).

[5] Gabriel Peter Udoh, "The Protection of Literary Works under Article 2 of the Berne Convention and Its Acceptability in EU Countries," Research Paper (United States: Social Science Research Network, 2020).

[6] Ezieddin Elmahjub, "An Islamic Perspective on the Theories of Intellectual Property," in *Copyright Perspectives*, ed. Brian Fitzgerald and John Gilchrist (Cham: Springer International Publishing, 2015), 51–84; Rehana Anjum, "An Introduction of Intellectual Property Rights in Islamic Law," *SSRN Electronic Journal*, 2019.

[7] Ameen Ahmed Abdullah Qasem Al-Nahari et al., "Common Conceptual Flaws in Realizing Maqāṣid Al-Sharīʿah Vis-à-Vis Islamic Finance," *ISRA International Journal of Islamic Finance* 14, no. 2 (2022): 190–205; Abdessamad Belhaj, "'Abū Yaʿrub Al-Marzūqī and His Critique of the Maqāṣid Theory," *Religions* 14, no. 9 (2023): 1212; Jonathan G. Ercanbrack and Ali Ali, "The New Legalities of Islamic Contractual Interpretation: Institutional Frameworks and the Displacement of Intention," *International Journal of Islamic and Middle Eastern Finance and Management* 17, no. 6 (2024): 1196–1212.

[8] Sohaib Mukhtar, Zinatul Ashiqin Zainol, and Sufian Jusoh, "Islamic Law and Trademark Protection," *Malaysian Journal of Syariah and Law* 7, no. 1 (2018): 1–28; Kristin Brandl, Izzet Darendeli, and Ram Mudambi, "Foreign Actors and Intellectual Property Protection Regulations in Developing

intellectual property crime solely through the lens of ethical guidelines in Islamic values, which address the moral aspects of offenses while operationally neglecting the system of sanctions (*ta'zīr*).[9] Lastly, scholarly attention to issues of Islamic jurisprudence in the contemporary era has been limited, particularly regarding fatwa issues related to intellectual rights, without a comprehensive development of the fiqh punishment structure.[10] By addressing these considerations, a knowledge gap can be transformed into the development of a punishment structure that aligns with Islamic moral rights concerning intellectual property crime. This includes establishing jurisprudential criteria that address the contextual challenges posed by digitalization and the current globalization of intellectual property.

This study delineates three primary areas of inquiry: first, the manner in which Islamic moral rights influence copyright law; second, the responses of Islamic jurisprudence to instances of copyright piracy; and third, the appropriate sanctions as viewed through the lens of Islamic jurisprudence concerning the offense of intellectual piracy. This study significantly contributes to the re-examination of the framework of Islamic jurisprudence in relation to criminal sanctions for intellectual piracy, particularly in the context of Indonesia, where there remains a lack of clarity in positive legal instruments, rendering this issue a persistent concern. The prevalence of intellectual property violations underscores the necessity for a fiqh-based approach that incorporates moral considerations as a pertinent mechanism for sanctioning offenders of piracy.[11] Consequently, this study posits that intellectual property crimes should be categorized as *ta'zīr*, guided by explicit criteria such as the degree of harm (*ḍarar*), the offender's intention (*niyyah*), and the social ramifications (*maṣlaḥah*). This classification aims to yield legal solutions that are responsive to the contemporary challenges posed by globalization and the digitalization of intellectual property.

Previous Studies

In the realm of Islamic law principles, copyright is implicitly informed by the Qur'an and Hadith, particularly regarding issues of punishment. From a Qur'anic perspective, the fundamental arguments arise in contemporary debates, as illustrated

Countries," *Journal of International Business Studies* 50, no. 5 (2019): 826–46; Ida Madieha Azmi and Engku Rabiah Adawiyah Engku Ali, "Legal Impediments to the Collateralization of Intellectual Property in the Malaysian Dual Banking System," *Asian Journal of Comparative Law* 2, no. 1 (2007): 1–34; S Alsudairy and S Basu, "Interpreting Sharia Law of Torts in Online Copyright Infringements: A Roadmap for Judges in Saudi Courts," *Arab Law Quarterly*, 2025.

[9] Cole Durham, "Corte Interamericana de Derechos Humanos," *Revista Latinoamericana de Derecho Religión* 1, no. NE (2022): 1–27; Zul Anwar Ajim Harahap, "Reconstruction of Online Gambling Sanctions in Indonesia: A Comparative Analysis of Ta'zir Sanctions and Penalties of the Electronic Information and Transaction Law," *Al-Istinbath: Jurnal Hukum Islam* 10, no. 1 (2025): 130–53.

[10] Aulia Nur Hanifa, "Fiqh Approach to the Legal Protection of Intellectual Property Rights of Writers in the Special Region of Yogyakarta," (Thesis, Yogyakarta, Universitas Islam Indonesia, 2025); Mappasessu Mappasessu and Andi Muhammad Akmal, "Studying Fiqh Based on the Quran and Hadith in the Modern Era by Revisiting the Methodology of Legal Istinbat," *Nuris Journal of Education and Islamic Studies* 5, no. 2 (2025): 151–67.

[11] Gianna Lotito et al., "Women in Piracy. Experimental Perspectives on Copyright Infringement," *Review of Law & Economics*, 5 May 2025.

in Sura 4:29, 2:188, and 26:183.[12] These verses explicitly prohibit the consumption of and harm to others' property without just cause.[13] This indicates that Islam places great importance on the principles underlying copyright, which aim to protect individuals' creative works. Furthermore, the Hadith emphasizes that blood, property, and dignity must not be violated among individuals. It also mandates that Muslims, states, and leaders are responsible for protecting those who lack a guarantor or means of livelihood.[14] For that reason, Islam upholds a moral right to property, particularly in relation to the illegal infringement of copyright.[15]

The principles of Islamic law have been integrated into the management of copyright regulations in contemporary society. In the context of modernity, the maintenance of copyright can be delineated into four principal characteristics. Firstly, Qiyas is utilized to establish an analogy between the "author of works" and employees who possess rights to the outcomes of their labor.[16] Moshrefi et al.,[17] a distinguished scholar in Islamic jurisprudence, posits that copyright can be attributed to individuals who receive remuneration for engaging in Islamic practices such as incantation (*ruqyah*) and teaching the Qur'an. Secondly, '*urf* pertains to the collective understanding of community life; as noted by Ismail et al.,[18] although there is an absence of explicit legal texts regarding copyright, its recognition and acceptance within social practices provide a basis for its legal standing. Thirdly, the concept of *tashrī' al-maṣāliḥ al-mustajadḍah* encompasses the notions of legislation (*tashrī'*), public interest (*al-maṣāliḥ*), and emerging issues (*al-mustajadḍah*). This framework emphasizes the importance of safeguarding and promoting achievements. Consequently, the Hanafi's approach,[19] which focuses on the prevention of harm, has emerged as a fundamental principle in copyright discourse, aiming to enhance public awareness of potential moral hazards that may arise from various dimensions, thereby influencing the motivation for new creative endeavors.

From the standpoint of Islamic jurisprudence, the concept of copyright has attained normative legitimacy as articulated in the resolution of the Fifth Congress of the Islamic Fiqh Academy in 1988. This determination underscores the

[12] Muhammad Amanullah, "Author's Copyright: An Islamic Perspective," *The Journal of World Intellectual Property* 9, no. 3 (2006): 301–15; Ainee Adam, "Pricing and Profiting in Copyright: Introducing an Islamic Perspective," *Queen Mary Journal of Intellectual Property* 10, no. 2 (2020): 152–78.
[13] Muhammed Habib Dolgun, "Property Rights According to the Qurʿān and Sunnah and Their Economic Implications for Contemporary Societies," *SRA International Journal of Islamic Finance* 8, no. 1 (2016): 93–121.
[14] Erna Tri Rusmala Ratnawati and Rizqi Samera Al Farizi, "Protection of Intellectual Property Rights in the Perspective of Islamic Law," *Millah: Journal of Religious Studies*, (2023): 337–408.
[15] Muhammad Alwin Abdillah, Nairazi Nairazi, and Lina Agustina, "Copyright Infringement Crime in Islamic Criminal Law," *Legalite: Jurnal Perundang Undangan dan Hukum Pidana Islam* 7, no. 2 (2022): 119–31.
[16] Darmawati Darmawati, "Islamic Law and Copyright in Academic World: The Dynamic Debates between Privatization and Distribution of Knowledge," *Mazahib* 17, no. 1 (2018): 23–45.
[17] Ali Moshrefi, Amir Mollah Mohammad Ali, and Mahmoud Ghayoumzadeh, "Intellectual Property from the Perspective of Islamic Jurisprudence and Law," *Economic Jurisprudence Studies* (2022): 977–92.
[18] Ismail Ismail et al., "The Contribution of 'Urf to the Reform of Islamic Inheritance Law in Indonesia," *Al-Risalah: Forum Kajian Hukum dan Sosial Kemasyarakatan* 22, no. 2 (2022): 165–78.
[19] Julie Lowe, "Ḥanafī Approaches to Copyright," *Islamic Law and Society* 30, no. 3 (2022): 249–75.

recognition of both the economic and moral significance of intellectual creations, including business names, trademarks, logos, written works, and inventions.[20] These creations are regarded not only as intellectual products but also as assets that can be owned, transferred, and traded, provided they do not incorporate elements of *gharar* (uncertainty, hazard, fraud, or deceit).[21] This perspective illustrates that Islam prioritizes justice in wealth distribution while simultaneously acknowledging the necessity of safeguarding individual rights over creative and innovative works, aligning with the maqasid sharia (objectives of Islamic law) aimed at preserving property. Consequently, copyright within the Islamic framework transcends mere formal legal protection; it embodies an ethical obligation to honor the contributions of others and to foster the advancement of knowledge and creativity within the parameters of justice and the social good (*maṣlaḥah*).[22]

According to the fatwa issued by the Islamic Fiqh Academy, intellectual property has emerged as a crucial component of copyright protection within the framework of Islamic law, specifically referred to as *ḥaqq at-ta'līf*. This concept underscores the acknowledgment of Islamic principles regarding the rights of authors of original works, which are recognized as legitimate and protected personal property rights under Sharia.[23] Numerous Islamic scholars, including Malkawi[24] and Naim,[25] have articulated a broader interpretation of *ḥaqq at-ta'līf*, encompassing not only the personal rights associated with intellectual recognition but also the copyright pertaining to the publication, distribution, and utilization of works. In this regard, intellectual creations are safeguarded as a means of upholding individual dignity, serving as a moral instrument for the protection of original innovations, preventing plagiarism, and maintaining the integrity of the intellectual environment within Islamic scholarly traditions. This perspective suggests that Islam views authors not merely as producers of knowledge, but as individuals engaged in a scientific mandate that is intrinsically linked to ethical values, responsibility, and the pursuit of goodness.

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[20] Islamic Fiqh Academy, *Resolutions and Recommendations of the Council of the Islamic Fiqh Academy: 1985-2000* (Jeddah: Islamic Development Bank, 2000), 89.
[21] Ida Madieha Bt. Abdul Ghani Azmi, "The Philosophy of Intellectual Property Rights over Ideas in Cyberspace: A Comparative Analysis between the Western Jurisprudence and the Shari'ah," *Arab Law Quarterly* 19, no. 1 (2004): 191–208.
[22] See Asmuni Asmuni, Yusdani Yusdani, and Januariansyah Arfaizar, "Dynamics Response of Indonesian Islamic Law to the Protection of Intellectual Property Rights," *Ulumuna* 27, no. 2 (2024): 876–904; Ezieddin Elmahjub, "Islamic Jurisprudence as an Ethical Discourse: An Enquiry into the Nature of Moral Reasoning in Islamic Legal Theory," *Oxford Journal of Law and Religion* 10, no. 1 (2021): 16–42.
[23] 'Abd al-Karīm Ṣāliḥ, "Al-Iṭār al-Qānūnī Li Tadābir al-Ḥimāyah al-Tiknūlūjiyah Li al-Muṣannafāt al-Raqmiyyah Dirāsah Taḥlīliyah Muqāranah," *Journal of Legal and Political Studies* 3, no. 5 (2015): 168–201; Meirison Meirison and Zerly Nazar, "Intellectual Property Rights and Monopoly in the Perspective of Islamic Jurisprudence," *Al-Ahkam* 31, no. 1 (2021): 49–68.
[24] Bashar H Malkawi, "The Alliance Between Islamic Law and Intellectual Property: Structure and Practice," *University of St. Thomas Law Journal* 10, no. 3 (2013): 618–49.
[25] Nadia Naim, "The Ethical Considerations for a New Model of Intellectual Property Protection Under Sharia Law Principles in the GCC States," in *Ethical Discourse in Finance*, ed. Marizah Minhat and Nazam Dzolkarnaini (Cham: Springer International Publishing, 2021), 247–70.

Research Methodology

Research Design and Approach

This study utilizes a normative juridical research methodology, incorporating both conceptual and comparative approaches, to assess the applicability of Islamic criminal sanctions in addressing copyright infringement as a modern form of intellectual property crime. The normative approach is employed to analyze legal norms, Islamic legal doctrines, and statutory regulations pertaining to copyright protection and criminal penalties. The investigation primarily centers on the principles of *ḥifẓ al-māl* (protection of property) and *ḥaqq al-ibtikār* (intellectual property rights) within Islamic jurisprudence, which serve as the theoretical framework for evaluating copyright violations.

Data Sources

This study emphasizes the systematic collection of legal and scholarly sources pertinent to intellectual property rights and Islamic criminal law. The primary legal materials include both classical and contemporary Islamic legal texts, such as Qur'anic verses, Hadith, and the doctrinal principles of *fiqh al-jināyah* (Islamic criminal law), as well as national and international copyright regulations. To enhance the analysis, secondary sources are drawn from academic journal articles, scholarly books, legal commentaries, and prior studies addressing intellectual property rights, digital piracy, cybercrime, and the application of Islamic legal sanctions in modern contexts.

Data Analysis

The data are analyzed employing descriptive-analytical methods. Initially, the study delineates the conceptual status of copyright as a protected property right within Islamic law. Subsequently, it investigates the various forms and consequences of copyright infringement in contemporary society. Moreover, the research assesses the feasibility of implementing Islamic criminal sanctions, specifically *ta'zīr*, as an alternative or supplementary framework for addressing intellectual property offenses. Through this approach, the study seeks to develop a contextualized understanding of the potential contributions of Islamic criminal law to enhancing ethical and legal protections against copyright infringement in the modern digital era.

Results

Scholars who generate knowledge through the publication of original works, such as books, are held in high esteem within both the academic community and society at large. This status is closely linked to moral rights, which encompass both ethical and legal responsibilities. Scholars and authors are recognized as knowledge producers and moral agents, and their contributions are acknowledged and valued. Consequently, they are entitled to respect, protection, and recognition for their

intellectual endeavors. In accordance with the principles of maqasid sharia,[26] intellectual property is regarded as an asset that can be owned, transferred, traded, and safeguarded against various forms of exploitation. This perspective reflects an Islamic commitment to upholding human dignity. Therefore, Islamic law plays a crucial role in regulating, guiding, and safeguarding the intellectual outputs of scholars,[27] particularly those disseminated through credible mediums, while simultaneously promoting the dignity of individuals and preventing the irresponsible fabrication of intellectual content in the dissemination and circulation of scholarly works.

The increasing prevalence of pirated books in Indonesia can be attributed to a confluence of factors, including the affordability of pirated materials, the limited availability of legitimate publications, and advancements in technology that facilitate digital piracy. Consumers often prioritize cost over quality, and the unavailability of specific titles compels students and readers to seek out pirated alternatives. The proliferation of electronic books (e-books) has further intensified this issue, as digital formats are readily susceptible to unauthorized copying and distribution via the internet. This finding aligns with the reports from the Indonesian Internet Service Providers Association (*Asosiasi Penyelenggara Jasa Internet Indonesia,* APJII), which indicated that there are approximately 221.5 million internet users. This substantial user base is associated with a piracy crime contribution rate of approximately 18.98%. Additionally, cultural attitudes, such as a prevailing "right to copy" mentality and a general lack of legal awareness, have contributed to the normalization of book piracy. The ineffective enforcement of copyright laws, which primarily relies on consumer complaints rather than proactive measures, further undermines efforts to combat this issue. Crucially, the absence of legal repercussions for end users sustains the demand for pirated books, as purchasers encounter no penalties, thereby reinforcing this illicit market. To address this multifaceted problem, comprehensive strategies are required, including enhanced law enforcement, public education initiatives regarding intellectual property rights, and policy reforms that address the roles of both distributors and consumers of pirated literature.

Indonesia serves as a pertinent case study regarding the regulatory framework surrounding copyright infringement. Under Law No. 28 of 2014, copyright violations are defined as activities that involve the unauthorized appropriation, quotation, recording, reproduction, or dissemination of part or all of another individual's creative works without the consent of the copyright holder. This legislation delineates the various forms of infringement perpetrated by individuals or institutions, emphasizing the infringement of rights and the absence of authorization from the creator or copyright holder, which results in economic detriment.[28] Table 1

[26] Basem Melhem, Hitham Haloosh, and Qais Ali Mahafzah, "The Perspective of Moral and Financial Rights of Intellectual Property in Islam," *Arab Law Quarterly* 23, no. 4 (2009): 457–68.
[27] Ezieddin Elmahjub, *An Islamic Vision of Intellectual Property: Theory and Practice*, 1st ed. (United Kingdom: Cambridge University Press, 2019), 136–40.
[28] Chukwu Obinna Johnkennedy and Ainakhuagbor Aimiomode, "The Media and Respect for Intellectual Property in Nigeria: Trends, Implications and New Perspectives," *MSI Journal of Arts, Law*

provides illustrative examples of copyright violations, categorizing them into two primary types: direct and indirect piracy. Direct piracy refers to the unauthorized copying, printing, or reproduction of a work—such as a book, music, or film—by an individual or entity, followed by the illegal sale or distribution of that work. In contrast, indirect piracy encompasses activities related to the illegal import and export of works produced by another party without authorization. An example of this would be the importation of pirated books from foreign countries into Indonesia for sale without the consent of the copyright holder. The ramifications of these various forms of piracy extend to multiple stakeholders, including authors, publishers, and other entities within the creative industries, all of whom suffer material losses as a result.

Table 1. Examples of Copyright Infringement Forms

The Hijacked Form	Number of Piracies	Categorized of Infringement	
		The Types of Piracy	Explanations
Song/Music	2.8 Billion	Direct piracy	In Indonesia, it is estimated that people download 2.8 billion songs illegally every year
Software	8.9 Billion	Indirect piracy	Software piracy includes visiting pirated sites. Although the Indonesian government has blocked it, there are still various ways for pirates to carry out their actions
Movie/Film	3.7 Billion	Direct piracy	In Indonesia, this type is very significant in number with a variety of modus operandi
Books/Publishers	3 Billion	Direct piracy	These forms of piracy are increasing every year which further reduces the recognition of scientists

Sources: Tempo.co, 2017; CNBC Indonesia, 2022; Kompas.id, 2024.

Book piracy exerts a dual influence on the moral and economic rights of creators and copyright holders, each with distinct ramifications. From a moral perspective, while book piracy typically does not alter the content or integrity of the work, thereby not directly infringing upon the right of integrity or the right of attribution (also known as the right of paternity), it nonetheless undermines the inherent value of copyright protection as a perpetual right.[29] Economically, the repercussions are more pronounced: a decline in sales revenue significantly diminishes the income of

and Justice 2, no. 2 (2025): 34–42; Anna Pokrovskaya, "Copyright Infringement of Photographs on E-Commerce Platforms," *Journal of Comprehensive Business Administration Research* 2, no. 1 (2024): 53–62.

[29] Siddhartha Sharma, Rahul Telang, and Alejandro Zentner, "The Impact of Digitization on Print Book Sales: Analysis Using Genre Exposure Heterogeneity," *Manufacturing & Service Operations Management* 27, no. 2 (2025): 408–24.

creators and copyright holders, which subsequently diminishes the motivation to produce high-quality works.[30] Additionally, this financial loss has a systemic effect on the publishing industry, disrupting the creative ecosystem, curtailing investment in book production, and ultimately restricting the availability of quality works in the marketplace.[31] Data from WartaEkonomi.co.id indicates that piracy not only adversely affects individual stakeholders but also impacts the national economy by disrupting the industry value chain and diminishing the creative sector's contribution to Gross Domestic Product (GDP).[32] These findings highlight the pressing need for policies that not only emphasize law enforcement against piracy offenders but also promote public awareness regarding the economic and moral significance of copyright, alongside the necessity for alternative business models that enhance the affordability and accessibility of original books.

Copyright piracy, characterized by the unauthorized reproduction and distribution of creative works, results in significant moral and economic detriments. From the standpoint of Islamic jurisprudence,[33] while the term "piracy" is not explicitly defined, the fundamental nature of this act contravenes the principles of justice and the prohibition against the unlawful appropriation of others' property, as articulated in Sura 2:188. This verse admonishes Muslims against the illicit consumption of others' assets, which encompasses the unauthorized use of intellectual property. In accordance with the principles of fiqh,[34] piracy infringes upon the rights of property (*ḥaqq al-māl*) and undermines the integrity of creative endeavors (*ḥurmah al-'amal al-ibdā'ī*). Consequently, it can be argued that piracy warrants both criminal and civil penalties, as delineated in copyright legislation.

Furthermore, individuals engaged in piracy are categorized as *ẓālim*, as they unlawfully seize the rights of others, thereby incurring both worldly and spiritual repercussions. Islamic legal doctrine unequivocally denounces piracy as an illicit act. Therefore, it is imperative to implement comprehensive solutions that encompass rigorous enforcement of Islamic law, complemented by a moral and religious framework aimed at educating the public regarding the ethical dimensions of ownership within Islam. Contemporary scholars have classified book piracy as a breach of copyright (*ḥaqq al-ta'līf*) and a form of intellectual theft (*sariqah fikriyyah*).[35] This classification is grounded in a robust theological and jurisprudential framework within Islam, which can be analyzed through three distinct layers of argumentation. Firstly, from the perspective of maqasid sharia, the protection of copyright aligns with the principle of *ḥifẓ al-māl* (protection of property), a fundamental objectives of Sharia (*ḍarūriyyāt*). When an author produces a work, the investment of time, effort, and intellectual labor grants them exclusive rights (*ḥaqq al-ibtikār*) to the economic

[30] Brent Lutes et al., "Identifying the Economic Implications of Artificial Intelligence for Copyright Policy," Context and Direction for Economic Research (United States: Social Science Research Network, 2025), 32.
[31] Ajabe-Alhat et al., "Intellectual Property Rights in the Digital Era."
[32] Warta Ekonomi, "Kemenekraf Berkomitmen Berantas Pembajakan Film Indonesia," *Warta Ekonomi*, 2025.
[33] Elmahjub, "Islamic Jurisprudence as an Ethical Discourse."
[34] Hanifa, "Fiqh Approach to the Legal Protection of Intellectual Property Rights of Writers in the Special Region of Yogyakarta," 63.
[35] Shihāb al-Dīn al-Qarāfī, *Sharḥ Tanqīḥ al-Fuṣūl* (Beirut: Dār al-Fikr, 2004), 86.

and moral benefits derived from their creation. Engaging in piracy, which involves reproducing works without authorization, directly contravenes this principle by undermining the incentives for creativity and depriving authors of equitable remuneration (See: Sura 53:39).

Additionally, piracy disrupts the scholarly ecosystem, which places a high value on the *sanad* of scholarship and the authenticity of texts, as evidenced by the tradition of *ijāzah* in the transmission of hadith. Secondly, in terms of *qawā'id fiqhiyyah*, piracy embodies the element of *ḍarar*, which is explicitly prohibited in hadith, as articulated in the phrase *lā ḍarar wa lā ḍirār*. Thirdly, from the standpoint of *taklīfī* law, piracy is classified as *ḥarām*, as it satisfies several criteria: the appropriation of another's property without compensation (See: Sura 4:29); the obligation to provide compensation (*ḍamān*) to the copyright holder, akin to the principles governing theft; and the spiritual repercussions associated with the consumption of unlawful wealth (See: Sura 2:188). Ultimately, this analysis posits that piracy constitutes both a moral and economic transgression, as it facilitates the commission of sin (*ta'āwun 'alā al-ithm*).

Critiques have emerged concerning copyright infringement, positing that knowledge should be shared without limitations.[36] However, such unrestricted dissemination is at odds with the principle of justice (*'adl*) as articulated in Sūrah 6:152. Figure 1 provides an analysis of piracy as a *sharī* offense that encompasses various dimensions.[37] Piracy is not solely a breach of secular law; it is also a crime that entails both sinful behavior and consequences in this world and the hereafter. An effective resolution must incorporate: the enforcement of positive law, such as Copyright Law; the issuance of scholarly fatwas to enhance awareness within Muslim communities; and the development of halal business models, including open-source licensing, that reconcile the rights of creators with public access. Consequently, Islam presents a more holistic ethical-juridical framework that surpasses secular legal methodologies in addressing piracy by simultaneously tackling its moral, legal, and economic dimensions.

Discussion

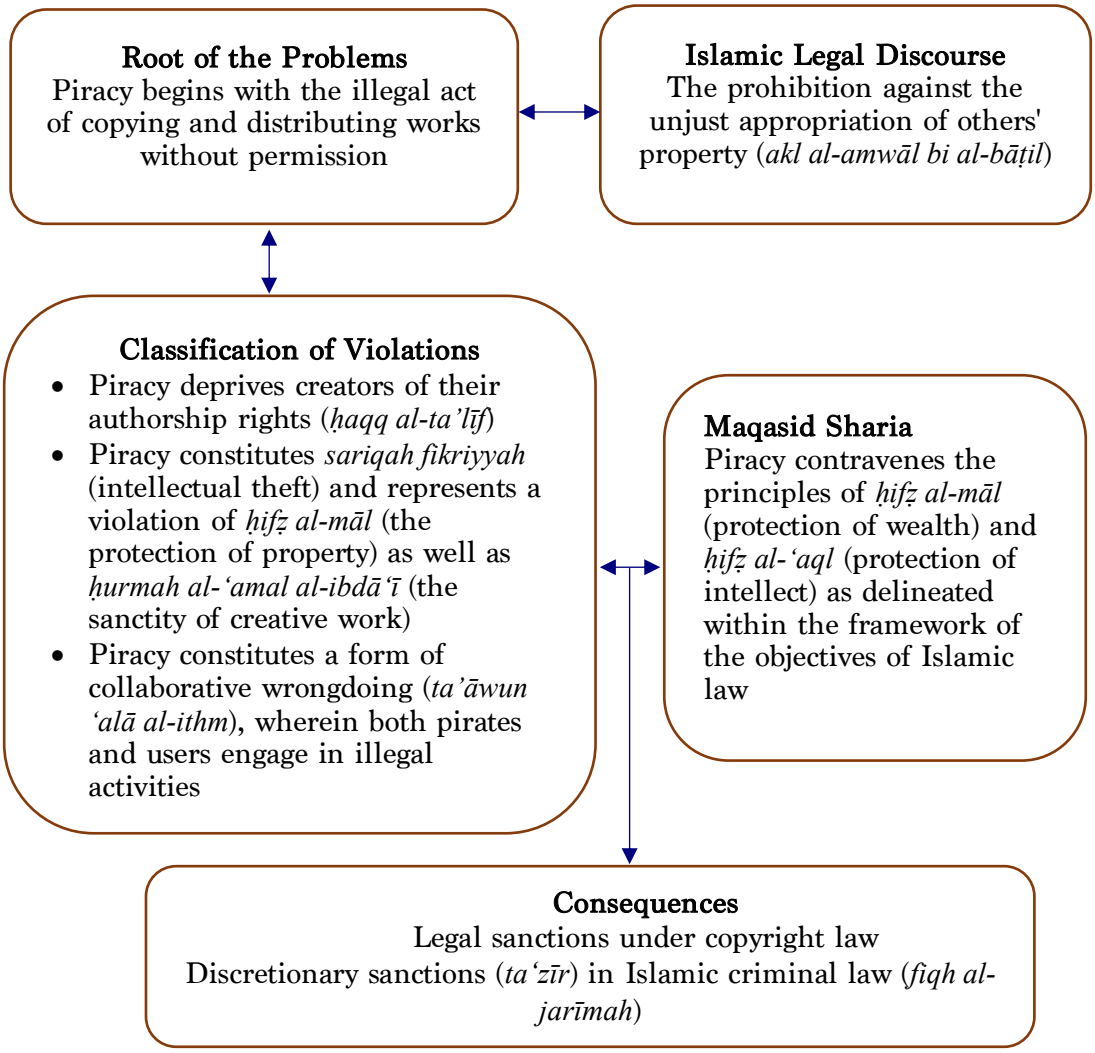
Currently, the penalties imposed on individuals engaged in copyright piracy remain relatively lenient. This situation indicates that the existing punitive measures do not effectively deter such illicit activities. According to national legislation, individuals convicted of piracy face a maximum sentence of four years of imprisonment and/or a fine not exceeding IDR 1,000,000,000 (one billion rupiah) or USD 59,422.80.[38] Additionally, those who cause material losses through piracy may be subjected to a maximum imprisonment of ten years and/or a fine of up to IDR 4,000,000,000 (four

[36] Abdillah, Nairazi, and Agustina, "Copyright Infringement Crime in Islamic Criminal Law"; Lutes et al., "Identifying the Economic Implications of Artificial Intelligence for Copyright Policy," 54.
[37] Samiul Hasan, "Islamic Jurisprudence: Sources and Traditions Creating Diversity in Human Relationships," in *The Muslim World in the 21st Century*, ed. Samiul Hasan (Dordrecht: Springer Netherlands, 2012), 23–42.
[38] Copyright Law No. 28 of 2014, Article 9, Paragraph (1) Letters a, b, e and g.

billion rupiah) or USD 23,7691.20.[39] The Copyright Law stipulates stringent penalties for all violators, including operators of venues that trade in pirated goods, who may incur fines of up to IDR 100,000,000 or USD 5,942.28.[40]

In the case of consumers of pirated books, the applicable sanctions are governed by the Criminal Code, specifically Chapter XXX on Handling (Articles 480-482). Buyers of pirated books, who are aware or reasonably suspect that the materials are the result of criminal activity, may face a maximum sentence of four years in prison or a fine of IDR 900,000 (adjusted according to Supreme Court Regulation [PERMA] No. 2/2012). If such purchases are habitual, the penalties may escalate to a maximum of seven years of imprisonment. This underscores that while the Copyright Law predominantly targets producers and distributors, consumers of pirated books are also subject to legal repercussions as a means of accountability.

Figure 1. Integrating Fiqh and Legal Sanctions in Addressing Intellectual Property Crimes



Sources: Author's elaboration, 2026.

[39] *Ibid.*, Article 113, Paragraph (4).
[40] *Ibid.*, Article 9, Paragraph (1), Letters from a to i.

In accordance with positive law, Islamic jurisprudence prescribes sanctions for the use of pirated books, although the nature of the penalties varies depending on the specific violation. Islamic law distinguishes between two categories of offenses: those that infringe upon the rights of Allah (*ḥaqq Allāh*) and those that violate human rights (*ḥaqq ādamī*). Fixed punishments (*ḥudūd*) are applicable to the former category, exemplified by the amputation of a hand for theft (*sariqah*), which is subject to stringent evidentiary requirements (See: Sura 5:38). Conversely, copyright infringement is primarily classified as a violation of human rights, thereby necessitating discretionary penalties (*ta'zīr*) that are determined by authorities. These penalties may include fines, compensation (*ḍamān*), or imprisonment, as such acts are considered forms of intellectual theft (*sariqah fikriyyah*) and unjust enrichment (*akl al-māl bi al-bāṭil*, Sura 2:188).

Contemporary fatwas, such as those issued by the MUI in 2005,[41] along with scholarly consensus (*ijmā'*), categorize piracy as haram, thereby underscoring the importance of moral and legal accountability. Unlike the rigid nature of *ḥudūd*, *ta'zīr* provides for flexible sanctions that are designed to deter piracy while simultaneously upholding justice (*'adl*) and safeguarding intellectual property (*ḥifẓ al-māl*) within the framework of maqasid sharia.[42] Consequently, Islamic law serves to complement secular copyright systems by incorporating ethical, legal, and spiritual considerations. Piracy cannot be reductively equated with theft (*sariqah*) within the framework of Islamic law without a nuanced classification, as it encompasses two distinct actions: the unauthorized reproduction of copyrighted materials and the exceeding of licensed print quantities. While direct piracy, such as illegal printing, may be classified as intellectual theft (*sariqah fikriyyah*) due to the unlawful appropriation of the creator's economic rights (*ḥaqq al-māl*), the acquisition and utilization of pirated books can be viewed as receiving stolen goods (*penadahan*).

Islamic jurisprudence draws parallels between this and *fuḍūlī* transactions, which involve the unauthorized trade of another's property and are deemed impermissible due to their invalid object (*ma'qūd 'alaih*) when derived from illicit means (*ḥarām bi-waṣfih*), even if the item itself is otherwise lawful. This perspective is consistent with the principle that "what is acquired unlawfully remains unlawful" (*mā ukhlisa bi-ḥarām fa-huwa ḥarām*). Furthermore, *penadahan* is categorized into profit-driven (*heler*) and non-commercial (*winstbejag*) activities, both of which contravene the principle of justice (*'adl*) by perpetuating illegal markets. Contemporary Islamic legal scholarship, as exemplified by the resolutions of the OIC Fiqh Academy,[43] underscores that such actions undermine maqasid sharia, particularly the safeguarding of intellectual labor (*ḥifẓ al-'amal al-ibdā'ī*), thereby necessitating *ta'zīr* sanctions that are commensurate with the harm inflicted upon creators and society at large.

[41] See Indonesian Ulema Council (MUI) Fatwa's No. 1 of MUNAS VII/MUI/5/2005.
[42] Copyright Law of Indonesian Ulema Council (MUI) Fatwa's No. 1 of 2003.
[43] Organization of Academic Cooperation, *Resolutions and Recommendations of the International Islamic Fiqh Academy* (Jeddah: International Islamic Fiqh Academy, 2021).

The act of utilizing pirated books is regarded as a breach of human rights (*ḥaqq ādamī*) within the framework of Islamic jurisprudence, as it unjustly undermines the economic rights of creators and copyright holders. As a form of intellectual property infringement akin to the receipt of *penadahan*, it necessitates *ta'zīr* sanctions that may include: corporal punishment (such as flogging, while capital punishment is not applicable to non-violent offenses); restrictions on personal freedom (including imprisonment or exile); financial penalties (such as fines or asset confiscation), with the amounts determined judicially based on the severity of the damage and the need for deterrence; and non-material sanctions (such as public censure, occupational bans, or mandatory counseling). Contemporary Islamic legal scholarship, exemplified by resolutions from the OIC Fiqh Academy,[44] underscores the necessity for these sanctions to align with the maqasid sharia—particularly the safeguarding of intellectual labor (*ḥifẓ al-'amal al-ibdā'ī*)—while also taking into account modern circumstances. For instance, fines should be commensurate with the actual economic losses incurred by rights holders, and rehabilitative measures (such as public apologies) may be employed alongside punitive actions to restore moral accountability. This perspective is consistent with the principle that *ta'zīr* adapts to societal conditions (*taṭawwur al-'uqūbāt bi ḥasb al-aḥwāl*).[45]

In analyzing the concept of *ta'zīr* from the perspective of al-Mawardi, it becomes evident that Islamic law prescribes corrective sanctions for individuals who engage in the use of pirated books, highlighting both punitive and educational aspects. Classical jurists, including al-Mawardi in his work *al-Aḥkām al-Sulṭāniyyah*, [46] intentionally retained a degree of flexibility in assessing the severity of *ta'zīr* punishments, indicating that sanctions should be commensurate with the specific circumstances surrounding the offense and the offender. This jurisprudential stance presents a paradox: while it permits contextual adaptability, it simultaneously lacks definitive criteria for addressing contemporary copyright infringements. Modern Islamic legal scholarship, as exemplified by the Fiqh Academy of Jeddah (2019),[47] contends that this deficiency necessitates the establishment of standardized guidelines—such as tiered fines that correspond to the commercial damage incurred or mandatory community service for first-time offenders—to ensure that legal rulings are rational (*ma'qūl*), quantifiable (*maḥdūd*), and consistent with the maqasid sharia's objective of safeguarding intellectual property (*ḥifẓ al-māl al-ibdā'ī*). It is essential to delineate distinctions that differentiate between producers (direct violators) and consumers (indirect participants) of piracy, given the significant disparities in their moral culpability and economic repercussions.

The enforcement of sanctions against individuals engaged in piracy has encountered numerous challenges, particularly in the realm of intellectual property

[44] Islamic Fiqh Academy, *Resolutions and Recommendations of the Council of the Islamic Fiqh Academy: 1985-2000*.
[45] Wilda Lestari, "Ta'zir Crimes in Islamic Criminal Law: Definition Legal Basis Types and Punishments," *Al-Qanun: Jurnal Kajian Sosial dan Hukum Islam* 5, no. 1 (2024): 22–32.
[46] Abu al-Hasan 'Ali ibn Muhammad ibn Habib al-Mawardi, *Al-Aḥkām Al-Sulṭāniyah* (Kuwait: al Maktabah Dar ibn Qutaibah, 1989), 23.
[47] Organization of Academic Cooperation, *Resolutions and Recommendations of the International Islamic Fiqh Academy*, 60.

crimes. A primary concern is the inadequacy of preventive measures, which are perceived as ineffective due to the leniency of the imposed sanctions.[48] In Indonesia, the legal framework for addressing piracy imposes relatively light penalties, with maximum fines reaching IDR 4 billion or imprisonment for up to 10 years for offenders, while users face even lesser sanctions of approximately IDR 900 thousand. Furthermore, the *ta'zīr* sanctions within Islamic jurisprudence remain discretionary and lack established standards, leading to inconsistent application. This inconsistency stems from a conceptual disparity between positive law, which predominantly targets producers and distributors, and Islamic law, which categorizes piracy as a violation of *ḥaqq ādamī* (human rights) but lacks comprehensive guidelines for contemporary intellectual property offenses.[49] Consequently, piracy is frequently normalized within a collectivist culture, where the protection of property (*ḥifẓ al-māl*) is undermined by ineffective law enforcement.

Islamic jurisprudence, however, reframes piracy as *sariqah fikriyyah* (intellectual theft) violating *ḥifẓ al-māl* (property protection) in maqasid sharia, mandating *ta'zīr* sanctions like compensatory fines (20% of work value) and moral restitution (public apologies). Crucially, Indonesia's 2003 MUI fatwa against software piracy demonstrates the untapped potential of religious decrees to amplify deterrence—yet its limited adoption reveals a gap in institutionalizing fiqh-based IP enforcement. A 2023 survey of Indonesian universities found that 68% of students viewed pirated textbooks as ethically permissible due to cost barriers, underscoring the need for hybrid solutions: tiered *ta'zīr* penalties scaled to infringement severity (e.g., commercial vs. educational use) paired with "open-access waqf" models that subsidize legitimate content through Islamic social finance mechanisms. This dual legal-theological approach, bridging WTO TRIPS compliance and maqasid-aligned restorative justice, offers a replicable framework for Muslim-majority economies grappling with piracy's moral-economic paradox.

The inadequacy of current punitive measures against copyright piracy—both in secular legal systems (e.g., Indonesia's maximum 10-year imprisonment and IDR 4 billion fine for distributors) and Islamic jurisprudence (flexible but inconsistent *ta'zīr* sanctions)—reveals a critical gap in deterring digital-era intellectual property (IP) violations. While positive law focuses on producers, Islamic fiqh classifies piracy as a violation of *ḥaqq ādamī*, necessitating sanctions that balance retributive justice (*'adl*) and restorative reform (*tawbah*). However, the absence of standardized *ta'zīr* criteria (e.g., tiered fines proportional to damages or mandatory IP education) and weak enforcement of fatwas (e.g., MUI's 2003 anti-piracy decree) perpetuate normalization of piracy, particularly in collectivist societies. A novel solution lies in synthesizing maqasid sharia (e.g., *ḥifẓ al-māl* or protection of property) with modern IP frameworks, such as the WTO's TRIPS Agreement, by institutionalizing graduated *ta'zīr* penalties (e.g., 20% of original work value) and leveraging religious authorities to issue binding fatwas. This approach, empirically tested in Indonesia's

[48] Dhvani Mehta and Debadityo Sinha, "Penalties and Compensation," in *The Oxford Handbook of Environmental and Natural Resources Law in India*, ed. Philippe Cullet, Lovleen Bhullar, and Sujith Koonan, 1st ed. (United Kingdom: Oxford University Press, 2024), 785–804.
[49] Elmahjub, "An Islamic Perspective on the Theories of Intellectual Property," 154.

2003 software piracy fatwa, demonstrates potential to bridge the conceptual disparity between legal systems while addressing the moral-legal paradox of IP enforcement in Muslim-majority contexts.

This research makes a significant theoretical contribution by constructing an integrated Islamic copyright framework that bridges divine injunctions (Qur'anic prohibitions against unlawful appropriation), classical jurisprudential tools, and modern institutional mechanisms, thereby challenging the Western-centric IP paradigm and demonstrating how *ḥaqq at-ta'līf* (author's rights) aligns with both *ḥifẓ al-māl* (property protection) and global standards like the TRIPS Agreement. Practically, it offers actionable solutions for Muslim-majority nations like Indonesia by proposing: (1) standardized *ta'zīr* sanctions (e.g., scaled fines at 20% of work value for commercial piracy, coupled with mandatory IP education for students), (2) hybrid enforcement models that synergize secular copyright laws with religious fatwas (e.g., MUI's 2003 decree), and (3) waqf-funded open-access initiatives to address affordability barriers—a model empirically validated by survey data showing 68% of Indonesian students justify piracy due to cost. By operationalizing fiqh principles into tiered penalties and restorative measures (*ḍamān*), this framework not only deters piracy but also fosters an ethical ecosystem that reconciles creator rights with Qur'anic mandates for knowledge equity.

This research advocates for innovative approaches within Islamic law to address violations of intellectual property rights (IPR) through two primary strategies: the standardization of *ta'zīr* and the enforcement of fatwas. Firstly, the implementation of graduated fines (e.g., 20% of the value of the original work) as a form of *ta'zīr* aligns with the principles of *'adl* (justice) and *maṣlaḥah* (social good) in fiqh, ensuring that penalties are commensurate with the degree of harm inflicted. Additionally, non-punitive measures such as public apologies and compulsory education on IPR embody the restorative ethos in Islam, which prioritizes moral reform and preventive measures (*zajr*). Secondly, collaboration with religious institutions, such as the Indonesian Ulema Council (MUI) and the Organization of Islamic Cooperation (OIC), to issue binding fatwas against piracy enhances the legitimacy of anti-piracy norms within the Muslim community.[50] A case study examining the 2003 MUI fatwa prohibiting software piracy illustrates the efficacy of fatwas in mitigating violations, although challenges in implementation persist, particularly regarding cross-national coordination. This model is also consistent with international standards, such as the WTO TRIPS Agreement, which underscores the importance of deterrence and restitution, while providing a distinctive perspective rooted in Islamic values.

Conclusion

The Islamic legal framework provides a unique ontological foundation for copyright protection by synthesizing divine injunctions, jurisprudential instruments, and legal validation. Crucially, this framework transcends Western copyright paradigms by

[50] Organization of Academic Cooperation, *Resolutions and Recommendations of the International Islamic Fiqh Academy*, 65.

embedding moral-economic rights within maqasid sharia—positioning plagiarism not merely as legal infringement, reframes piracy as *sariqah fikriyyah* (intellectual theft), but also as violation of *ḥifẓ al-māl* (property protection) and *ḥurmah al-ʻamal al-ibdāʻī* (sanctity of creative work). Empirical validation emerges from the Hanafi school's harm-prevention principle, which has been operationalized in contemporary fatwas (e.g., MUI's 2003 ruling against software piracy) to mandate *ḍamān* (compensation) for rights holders, while custom-based recognition of authorship norms in Muslim scholarly traditions (e.g., *ijāzah* or certification) demonstrates indigenous mechanisms for IP protection predating modern copyright systems. This tripartite integration of theological imperatives, classical jurisprudence, and institutional enforcement offers Muslim-majority nations like Indonesia a normative blueprint to combat digital piracy through sharia-compliant sanctions (e.g., scaled *taʻzīr* fines proportional to damages) while addressing access barriers via Islamic social finance models like waqf-funded open educational resources—a approach that reconciles creator rights with Qur'anic injunctions for knowledge dissemination.

This study is subject to several limitations. First, the reliance on Indonesia as a primary case study may limit the generalizability of findings to other Muslim-majority contexts with differing legal, economic, and cultural dynamics, such as the Gulf states or North Africa. Second, the proposed *taʻzīr*-based sanctions (e.g., scaled fines, waqf-funded solutions) remain largely theoretical, lacking empirical validation through real-world implementation or longitudinal studies to assess their efficacy in reducing piracy rates. Third, the research does not fully address potential conflicts between sharia-compliant penalties and secular copyright laws, particularly in pluralistic legal systems where harmonizing religious and state enforcement mechanisms could prove challenging. Finally, while the study highlights the role of fatwas as deterrents, it underplays structural barriers to their adoption, such as weak institutional coordination, varying levels of religious authority across regions, and the influence of global digital platforms that operate beyond national jurisdiction. These gaps suggest the need for comparative studies across OIC nations and pilot programs to test the feasibility of fiqh-based IP reforms.

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The author declares no conflicts of interest related to this research.

Ethical Approval

This study did not involve human participants nor the collection of sensitive personal data; therefore, ethical approval was considered unnecessary.

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