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THE STATUS OF COPYRIGHT HOLDERS IN MAKING ONLINE APPLICATIONS ACCORDING TO SHARIA ECONOMIC LAW

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Abstract

This article discusses and analyses in depth the status of copyright holders of online application creation according to Sharia economic law. This study aims to analyse the juridical review of the status of copyright holders in the creation of online applications, Islamic law review, and the consequences of ownership. The approach of this research is conceptual and statutory, with a normative juridical perspective, drawing on data obtained from legal materials and prescriptive analysis. The research results show that, from a juridical point of view, Law Number 28 of 2014 concerning Copyright grants the creator-provider the ideal status of copyright holders in the creation of online applications, not the user. The creator is positioned as the original creator of the application, despite the user's contribution. However, suppose the creator-provider consciously grants a license to the user-contributor. In that case, the user becomes the copyright holder, even though this does not eliminate the original rights attached to the creator. Second, in Sharia economic review, online applications can become property rights, namely through direct creation by the creator, or through the process of *bai'* (sale and purchase), grants, and inheritance. For users, their status is only as owners if the *Bai*, grant, and inheritance contracts have been completed. The status of the user can be upgraded to a copyright holder if it gets a license or written permission from the original creator. The copyright holder is given to the creator personally or on behalf of the co-creator of the milk musytarak category. In terms of ownership (*milkiyyah*), everyone can have an online application, either owned by the creator because he created it, or other people through the process of buying and selling (bai'), grants, or inheritance.

Keywords: Copyright Holder, Online Application, Legal Status, and Sharia Economic Law.

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Abstrak

Artikel ini membahas dan menganalisis secara mendalam status pemegang hak cipta dalam penciptaan aplikasi online berdasarkan hukum ekonomi syariah. Penelitian ini bertujuan untuk menganalisis tinjauan yuridis status pemegang hak cipta dalam penciptaan aplikasi online, tinjauan hukum Islam, dan konsekuensi kepemilikan. Pendekatan penelitian ini bersifat konseptual dan normatif, dengan perspektif yuridis normatif, yang didasarkan pada data yang diperoleh dari bahan-bahan hukum dan analisis preskriptif. Hasil penelitian menunjukkan bahwa, dari sudut pandang hukum, Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta (IPR) memberikan status ideal sebagai pemegang hak cipta kepada pencipta-penyedia dalam pembuatan aplikasi online, bukan kepada pengguna. Pencipta ditempatkan sebagai pencipta asli aplikasi, meskipun ada kontribusi pengguna. Namun, jika pencipta-penyedia secara sadar memberikan lisensi kepada pengguna-kontributor, pengguna menjadi pemegang hak cipta, meskipun hal ini tidak menghilangkan status hak asli yang melekat pada pencipta. Kedua, dalam tinjauan ekonomi syariah, aplikasi online dapat menjadi hak milik, yaitu melalui penciptaan langsung oleh pencipta, atau melalui proses bai' (jual beli), pemberian, dan warisan. Bagi pengguna, statusnya hanya sebagai pemilik jika kontrak *Bai*, pemberian, dan warisan telah diselesaikan. Status pengguna dapat ditingkatkan menjadi pemegang hak cipta jika mendapatkan lisensi atau izin tertulis dari pencipta asli. Pemegang hak cipta diberikan kepada pencipta secara pribadi atau atas nama pencipta bersama dalam kategori milk musytarak. Dalam hal kepemilikan (milkiyyah), setiap orang dapat memiliki aplikasi online, baik dimiliki oleh pencipta karena ia menciptakannya, atau oleh orang lain melalui proses jual beli (bai'), hibah, atau warisan.

Kata kunci: Aplikasi Online, Hak Cipta, Hukum Ekonomi Syariah dan Status Hukum

INTRODUCTION

The development of information technology currently affects various aspects of people's lives, including economic factors, work, public services, and many other areas. One of the multiple aspects resulting from the development of technology today is the emergence of products created by online applications or computer applications. In the digital era, the creation of online applications has become an integral part of various industry sectors, including e-commerce, fintech, and education. Copyright in this context plays a crucial role in determining ownership and protection of innovation. However, from the perspective of Sharia Economic Law, the concept of copyright ownership must be examined in light of principles that promote

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justice, transparency, and shared prosperity. The primary issue with the status of online application copyright holders stems from the complexity of the application creation process.

On the one hand, the emergence of products created by online/ computer applications makes it easier for individuals, communities, institutions, community organisations, and government organisations to conduct their activities, resulting in a positive impact and perceived usefulness in life. On the other hand, it is necessary to have explicit regulations to govern the copyright status of online application products, to prevent piracy of the application or unilateral claims on the product in the future. An app is usually developed through collaboration between programmers, designers, investors, and other parties who contribute to its design. In the conventional legal system, copyright is generally granted to the individual or entity that first created or financed the creation of the app.[1] However, in Sharia Economic Law, ownership must fulfil the principle of a valid contract, namely, obtaining it in a *halal* way that is prescribed.[2] If the ownership is joint, it must be based on openness in the distribution of benefits, as well as justice in the distribution of rights. The benefits of ownership can be used by those who own it.[3]

The creation of online application products is part of copyright, which is an intellectual property right (IPR) owned by an individual, and the law must protect it. IPR is a material right, the right to something that comes from the work of the brain, the work of the mind, or an emotional work. The result of combining emotional and rational work is then referred to as IPR.[4] The categories of IPR are copyright, trademark, geographical indication, industrial design, patent, protection of confidential information, and integrated circuit layout, as well as control over unfair business competition practices in the course of licensing.[5] Copyright is a right granted to the creator, and such rights

[1]Eddy Damian, *Glossary: Copyright and Related Rights,* (Bandung: Alumni, 2022), pp. 37.

[2]Yūsuf Al-Qaraḍāwī, *Dawr Qiyam wa Akhlāq fī Al-Iqtiṣād Al-Islāmī*, (Transl: Zainal Arifin and Dahlia Husin), (Jakarta: Gema Insani, 2022), p. 71. 71.

[3]Nur Wahid, *Sharia Economic Law in Indonesia: Theory and Regulation,* (Banyumas: Wawasan Ilmu, 2022), pp. 124.

[4]Yoyo Arifardhani, *Intellectual Property Rights Law: An Introduction,* (Jakarta: Kencana Prenada Media Group, 2020), p. 7. 7.

[5]Tim Lindsey et al, *Intellectual Property Rights: An Introduction,* Second Edition, (Bandung: Alumni Publishers, 2022), pp. 3.

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must be protected against infringing acts. Through this concept, the creator can exploit (use) his creation or permit people to exploit it. [6]

In the context of making online applications, this online application is copyrighted as a product of science that is directly related to the creation of products, and in which the law applies copyright. An online application is a device that has a function to operate a set of instructions, expressed in the form of code, language, scheme, or any form intended to make the computer work in performing its function or to achieve specific results.[7] From the perspective of copyright law, the creator of online applications, such as certain web pages, government websites, or educational institutions' websites, including the Academic Information System, holds the position of a copyright holder. It's just that from a legal perspective, there is ambiguity about the status of the copyright holder, namely whether the programmer, designer, and provider is an internet service provider company or a user. In other words, whether the *creator of the* application is concerned as a copyright holder or users, such as educational institutions or the government, as a user.

The creation of this online application is not entirely the result of the creator's contribution; there is also a contribution from the user regarding the concept of the application to be developed. Law Number 28 of 2014 on Copyright has regulated the position of the creator of copyright, which can be an individual or a group of people who jointly create a product, although in the end, both parties or one of the parties act as users.

However, the copyright law does not provide detailed explanations of the copyright on the creation of online applications. The problem that arises here is that the copyright law does not explicitly state whether the copyright of this online application is owned solely by the application creator or by both, as the user also contributes to the creation and conceptualization of the online application. If the online application belongs solely to the app creator, then the contributing user has no recourse to sue them, even if economic or moral loss arises for the user. After all, the user has contributed to the sketch and form of the online application. This is something that has not been explained in detail

[6]Damian, *Glossary...*, p. 37.

[7]Timoty Ezra Simanjuntak, "Copyright on Applications Ordered by Other Parties," 1 October 2023, https://www.hukumonline.com/klinik/a/hak-cipta-atas-aplikasi-yang-dipesan-pihak-lain-cl6856/; Timoty Ezra Simanjuntak, "Copyright on Applications Ordered by Other Parties," 2 May 2025, https://id.linkedin.com/pulse/hak-cipta-atas-aplikasi-yang-dipesan-efblc.

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in the law, which creates legal uncertainty for both application makers and application users.

In the context of Islamic economic law, the person who is the creator of a particular product is the party that has the property rights over what they have made or produced. The creator has the right to *use* or exploit the product they have created. Therefore, in Islam, it is stipulated that the property right over a product is obtained by one of the results of a particular effort or work that produces a specific product.[8] Copyright or *ḥuqūq al-ta'lif* is the ownership of the right to an object, ownership, and the power to get compensation against theft and unauthorised publishing or making copies.[9] If there is an imbalance, such as a party that does not get a share under its contribution, then it is contrary to the principles of justice in Islam.

In addition, there are challenges in applying Sharia Economic Law to online application copyrights, including how dispute resolution procedures are carried out in the event of rights infringement or economic exploitation that does not align with Sharia values. Regulations related to copyright in Indonesia have not fully accommodated aspects of sharia justice; therefore, this research is vital to analyze how copyright holders should be regulated in the context of Islamic law. Based on these issues, this research aims to examine the basis of Sharia law in determining the copyright holder of online applications and to explore ownership models that align with the principles of Islamic economic values, thereby preventing inequality and increasing benefits for all parties involved. For this reason, departing from these problems, this study is interesting to investigate further, starting from the aspect of the contribution of each party between the creator-provider and the user as the user of the application so that the copyright holder is known, as well as a review of sharia economic law related to copyright holders for the creation of online applications.

RESEARCH METHOD

The method used in this article employs a qualitative approach, examined through two distinct perspectives. First, a conceptual approach is employed, which involves exploring the views or doctrines that align with the

[8]Mardani, *Fiqh of Sharia Economics: Fiqh Muamalah*, 1st, Cet. 2 ed. (Jakarta: Kencana Prenada Media Group, 2013), pp. 66-67.

[9]Ahmad Ifham Sholihin, *Smart Book of Sharia Economics* (Jakarta: GM-Gramedia Pustaka Utama, 2013), pp. 320.

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legal issues being studied and serve as a basis for analyzing these issues. Second, the statutory approach involves tracing and interpreting laws and regulations relevant to the problems and legal issues raised.[10] The legal issue discussed in this article is the status of copyright holders in the creation of online applications according to Sharia economic law.

There are two primary types of research in the field of law: juridical-normative and juridical-empirical.[11] As for this article, the type of research used is normative juridical, which is research by tracing and reviewing library materials in the form of views of jurists, laws and regulations, judges' decisions, other library data that review the discussion of the object of research, particularly on the status of copyright holders in the creation of online applications according to sharia economic law.

The data source for this article is obtained from primary materials, specifically legislation related to copyright, as well as verses from the Quran and hadiths regarding ownership. In contrast, secondary legal materials are obtained from law books, journal articles, and other sources. Furthermore, the research data is analyzed using a specific pattern, known as prescriptive analysis, which is an analytical effort that researchers undertake to examine the ideal concept of law or something that should be enforced.[12] In this study, prescriptive analysis aims to examine what should be and ideally applied regarding the legal status of copyright holders making online applications, particularly in the context of Islamic economic law, also known as Sharia economic law.

RESULTS AND DISCUSSION

A. Concept of Copyright

Copyright is one type of Intellectual Property Rights (IPR).[13] IPR itself is a property right, the right to something that comes from the work of the brain and the work of the heart, on the one hand, and, on the other hand, the emotional work. The combination of the results of ratio and emotional work gave rise to a type of work known as intellectual work.[14] IPR has several

[10]Peter Mahmud Marzuki, *Legal Research*, Cet. 13, (Jakarta: Kencana Prenada Media Group, 2017), pp. 133.

[11]Jonaedi Efendi and Johnny Ibrahim, *Normative and Empirical Legal Research Methods* (Jakarta: Kencana Prenada Media Group, 2018), p. 149. 149.

[12]Marzuki, *Legal Research* ..., p. 41.

[13]Eddy Damian, *Copyright Law,* Fifth Edition, (Bandung: Alumni, 2019), pp. 3.

[14]Arifardhani, *Law of Rights* ..., p. 7.

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types.[15] The forms and branches of IPR include patents, trademarks, industrial designs, geographical indications, trade secrets, integrated circuit layout designs, and copyright.[16] This discussion only focused on the concept of copyright as one form of intellectual property rights.

Copyright (in Arabic called *al-milkiyyah al-fikriyyah* or *ḥaqq ibtikar*) is an exclusive right granted to the creator of the work to control the use of the work.[17] In this sense, exclusive rights refer to special rights, meaning rights that are limited to the creator and not available to others. For this reason, copyright is referred to as exclusive, special, and limited rights, which are granted only to the creator. Thus, if the creator is a single person, the right is given to that person. If the creator is several or more than one, then the right is granted explicitly to those who contributed to the creation of the product and cannot be transferred to others.

Historically, the concept of copyright has evolved in tandem with human existence. Since humans create, produce, discover, and invent things, it follows that copyright accompanies them. In this context, the use of the term copyright may not yet be used or may not yet be known. Still, the concept of the right to something that is produced, made, and created with energy, mind, and skill is widely recognized, so that the name of the right to ownership of something, whether it be objects, property, or other assets, is widely understood. From this historical perspective, it is essential to review Saidin's opinion, which states that the terminology of copyright initially did not exist and has not been widely known to the public. However, in Indonesia today, the naming of copyright law is based on the first development in European and Western countries. For example, the term "copyright" is used in the Netherlands, referred to as auteursrechts, and in the UK and the US, it is also known as copyright. Protection of copyright is the protection of rights that refers to the model first known in the Western world (America and Western Europe). Countries that are more advanced in developing science and technology, followed by progress in the world of industry and commerce,

[15]Lindsey et al, *Property Rights*, p. 3. 3.; Eddy Damian, *Legal Dynamics in Sustainable Development,* (Bandung: Alumni, 2017), pp. 199.

[16]Shidarta et al., *Legal Aspects of Economics and Business,* (Jakarta: Kencana Prenada Media Group, 2018), pp. 70-80.

[17]I. Gede Agus Kurniawan, *Intellectual Property Law in Indonesia,* (Yogyakarta: Deepublish, 2024), p. 10. 10.

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have sought to protect these rights through legal history, which appears in the form of Intellectual Property Rights protection.[18]

Countries in Europe and the West were the first to introduce models of legal protection for their creations in the fields of science, art, and literature, known as copyrights.[19] So, the protection of human works is deemed necessary to protect copyright law, the purpose of which is to provide a sense of security for one's work, as well as to provide *royalty rights* if the work is used for commercial purposes.

In the context of Indonesia, the provisions of copyright law, which were first developed in the UK and the US, have been adopted and received serious attention from the government and policymakers, as copyright law is established to protect the work of individuals. Since 1982, Indonesia has formulated the material/content of the law on copyright, namely through Act No. 6 of 1982. Then, in 1987, this law was amended through Law No. 7 of 1987. Because some of the legal material still needed to be revised and added, in 1997, it was again improved through Law No. 12 of 1997 on Copyright.[20] Next, in 2002, the government replaced and reformulated the law through Law of the Republic of Indonesia Number 19 of 2002 concerning Copyright. Over time, the provisions of the 2002 IPR have also been considered insufficient, as they are deemed out of line with legal developments and have not met the community's needs. Therefore, the IPR needs to be replaced with a new law.[21] For this reason, the latest rules were reformulated through Law Number 28 of 2014 concerning Copyright.

B. Creator, Copyright Holder, and Scope of Copyright

Creator is a person or several people who individually or jointly produce creations that are distinctive and personal. Creation is any creative work in the fields of science, art, and literature produced by inspiration, ability, thought, imagination, dexterity, skill, or expertise expressed in real form. The copyright holder is the creator, as the owner of the copyright, or the

[18]OK Saidin, *History and Politics of Copyright Law,* (Jakarta: Raja Grafindo Persada-Rajawali Pers, 2023), p. 3. 3.

[19]Saidin, pp. 3-4.

[20]Contained in the Consideration of Letter d, Law Number 19 of 2002 Concerning Copyright.

[21]Contained in the Consideration of Letter d, Law Number 28 of 2014 Concerning Copyright.

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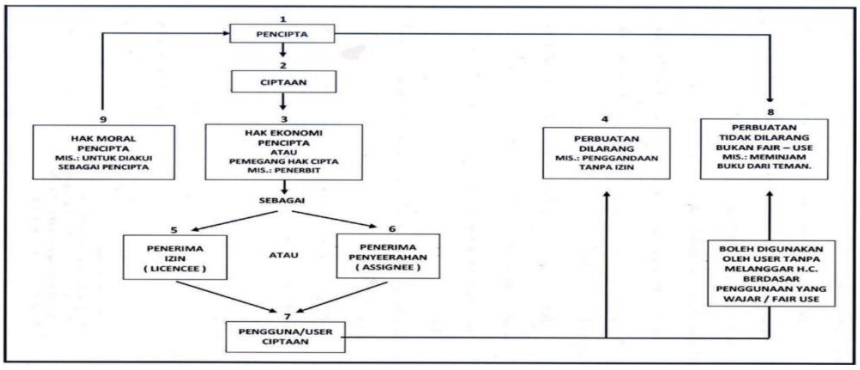
party who receives the right legitimately from the creator, or other parties who receive further rights from the party that has the right legitimately.[22]

In this context, there is a relationship between the creator and his creation. The creator has the moral right to be recognised as the creator. The creator has economic rights over their creation. Thus, the relationship between the creator and their creation can be depicted in the following scheme:

Figure 1: Scheme of the Creator's Relationship with His Creation



Source: Eddy Damian, 2022.[23]

The creator is a legal subject who is directly in contact with the object of their creation. There are two forms of legal subjects: human (natuurlijke persoon) and legal entity (*rechts persoon*). The main legal subject associated with copyright is the creator or copyright holder. Regarding the type of legal subject, the creator or copyright holder can be either a person (individual or group of individuals) or a legal entity. The definition of creator refers to the provisions of Article 1, Section 2 of the IPR: "The creator is a person or several people who individually or jointly produce a distinctive and personal creation".[24]

The copyright holder is the creator as the owner of the copyright, or the party who received the right legally from the creator, or other parties who receive further rights from the party who received the right legally. According to this definition, the creator is automatically the copyright holder of their own creation. A copyright holder is not necessarily the creator, and a copyright holder who is not the creator can only have part of the exclusive rights, namely economic rights, and will never get moral rights. A creator who is no longer a

[22]Damian, *Copyright Law,* p. 126.
[23]Damian, p. 126.
[24]BIP Editorial Team, *Copyright, Patent and Trademark Law,* (Jakarta: Bhuana Ilmu Popular, 2017), p. 2. 2.

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copyright holder does not have exclusive rights in the form of economic rights, but can still have moral rights.[25] The party considered as the creator is the person whose name is mentioned in the creation, stated as the creator in a creation, as well as mentioned in the creation registration letter or listed in the general register of creations as the creator. This does not apply if, in the future, it is proven otherwise; the creator is not entitled to their creation. [26]

Based on this concept, the creator can be a person or several people who together give birth to one creation. It can also be explained that the creator of a creation is the first owner of the copyright to the creation in question. Basically conventionally classified as the creator is the person who gave birth to a creation for the first time so that he is the first person who has the right as a creator called creator's rights. The creator creates a work according to the ability of mind, imagination and dexterity, skill, or expertise that is poured into a unique and personal form.[27]

So, it is clear that what is meant by the creator is a person, either as an individual entity or a group that is alone or together in producing a distinctive and personal creation. The copyright holder is the creator as the owner of the copyright or the party who receives the right legally from the creator, or other parties who receive further rights from the party who receives the right legally.

Copyright is directly related to the rights that are legally owned by the creator as a form of intellectual work. Copyright covers 3 (three) important aspects, namely science, art, and literature.[28] This is as affirmed in the IPR, precisely in Article 40 paragraph (1), that protected creations include creations in the fields of science, art, and literature, consisting of:

a. Books, pamphlets, embellishments of published works, and all other written works
b. Lectures, lectures, speeches, and other similar works
c. Teaching aids made for the purpose of education and science
d. Songs and/or music with or without text

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[25]Andika Wijaya, *Legal Aspects of Online Road Transport Business,* (Jakarta: Sinar Grafika, 2022), pp. 132-133.

[26]Yusran Isnaini, *Getting to Know Copyright: Through Questions and Answers and Case Examples,* (Cilacap: Pradipta Pustaka Media, 2019), pp. 34-35.

[27]Karjono, *Licence Agreement for the Transfer of Copyright of Electronic Transaction Computer Programs,* (Bandung: Alumni Publisher, 2023), pp. 43; See also in, Edy Santoso, *The Influence of the Globalisation Era on Business Law in Indonesia,* (Jakarta: Kencana Prenada Media Group, 2018), p. 66. 66.

[28]Galih Dwi Ramadhan, "The Scope of Intellectual *Property* Rights Protection for Video Games," *JIPRO: Journal of Intellectual Property,* Vol. 4, no. 2 (31 December 2021): 1-14, https://doi.org/10.20885/jipro.vol4.iss2.art1.

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e. Drama, musical drama, dance, choreography, puppetry, pantomime
f. Works of fine art in all its forms such as paintings, drawings, engravings, calligraphy, sculpture, statues, or collages
g. Applied art works
h. Architectural works
i. Map
j. Works of batik art or other motif art
k. Photographic works
l. Portrait
m. Cinematographic works
n. Translations or interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works from the results of transformations
o. Translation, adaptation, arrangement, transformation, modification of traditional cultural expressions
p. Compilation of works or data, either in formats that can be read by computer programmes or other media
q. Compilation of traditional cultural expressions as long as the compilation is an original work
r. Video games
s. Computer programmes

Based on the above description, it can be understood that Article 40, paragraph (1) of the IPR stipulates in detail the forms of products of the creator's creation that are protected by law. However, the IPR does not provide the categories and specifications of which creations are included in the scope of science products, art products, and literary products. However, it can be understood that the categories of letter p and letter s above encompass all aspects, including computer programs, which may be compilations of creations or data, in formats that computer programs or other media can read.

The scope of copyright is comprehensive, namely various types of products and one part of intellectual property that has the broadest scope of protected objects and products, because it includes three scopes, namely, scientific products, artistic products, and literary products. This right is quite explicitly stated in Article 40, paragraph (1) of the IPR. One of the copyrights within the scope of this science product is the compilation of creation or data, either in a format that is read with a computer programme, or other media, or the computer programme itself. This copyright should be legally protected to ensure that creators and copyright holders receive legal certainty.

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The emergence of copyright law is considered to be a recognition that copyright is intellectual property with a strategic role in supporting national development and promoting the general welfare. In this aspect, the development of science and technology has been so rapid that it needs increased protection, as well as assurance of legal certainty for creators and copyright holders. With this copyright law, creators and copyright holders gain legal certainty regarding the product of their creation, not only certainty in exercising their rights, but also certainty for the protection of their rights if others misuse the copyrighted material.

C. Theory of Ownership in Islam

Ownership is one of the primary objectives of the muamalat process in the community. The term "ownership" is a derivative form of the word "owner"; the term "owner" itself is derived from the root word "milik," which means possession, rights, fortune, or good fortune. Then, the word belonging forms several other word forms such as owning, owned, owner, ownership, or ownership. All of these words have the same meaning, namely owning, controlling, or having something.[29] The word ownership itself is defined as the condition and state of having something.[30] Judging from its origin, the term belonging or ownership is a term absorbed from Arabic, *milk*, which is composed of the letters *mim*, *lam*, and *kaf*, is a *singular* form (*mufrad / singular*), whose *plural (plural*) *al-mulūk*, meaning to have. [31]

Ownership is also associated with action based on legal recognition. In another understanding, *milk* or *milkiyyah* is having something and being able to act upon it (taṣarruf).[32] In terms of terminology, several common definitions are presented in the Islamic muamalah literature. Among them, al-Zarqā states that ownership or *milkiyyah* is:

اختصاص حاجز شرعا يسوغ صاحبه التصرف إلا لمانع.[33]

[29]W.J.S. Poerwadarminta, *General Dictionary of the Indonesian* Language (Jakarta: Institute of Language and Culture, 1954), pp. 459.

[30]Editorial Team, *Indonesian Dictionary* (Jakarta: Language Centre of the Ministry of Education and Culture, 2008), pp. 956.

[31]Ibn Manẓūr, *Lisān al-'Arabi* (Kuwait: Dār Al-Nawādir, 2010), Juz' 12, pp. 384.

[32]Wizārah Al-Auqāf, *Mawsū'ah al-Fiqhiyyah* (Kuwait: Wizārah Al-Auqāf, 1995), Juz' 39, pp. 31.

[33]Muṣṭafā Aḥmad Al-Zarqā, *Madkhal Al-Fiqhī Al-'Āmm*, (Damascus: Dar Al-Qalam, 2004), Juz' 1, pp. 333.

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" *The privilege that prevents others, according to Shara', justifies the owner of the power to act on the goods he owns, unless there is a barrier*".

According to al-Zuḥailī, *milk* is:

اختصاص بالشئى يمنع الغير منه و يمكن صاحبه من التصرف فيه ابتداء إلا لمانع شرعي.[34]

" *The privilege of something that prevents others from using it, and the owner is free to act on it directly unless there is a restriction imposed by the Shariah*".[35]

The term' ownership' above refers to the right of ownership, and the meaning of this right can be related to property or non-property, such as the right to a benefit. Al-Jurjānī and Al-Barkatī state that right etymologically means a correct determination that cannot be denied.[36] According to terminology, there are several formulations of the meaning of rights, including those mentioned by Shaykh Alī Khafīf, as quoted by Wahbah Al-Zuḥailī, that rights are the benefits that are owned by others. Wahbah Al-Zuḥailī himself states that *shara'* rights contain two meanings. First, a general obligation for all humans to respect each other's rights and not to interfere at all. Second, a specific obligation for the owner of the right to use his right in matters that do not harm others. According to Al-Zarqā, a right is a specificity that is determined by the community over a power or burden.[37]

Muhammad Al-Zuḥailī stated that there are different views of scholars in providing an understanding of rights (in the context of property rights). In his statement, he stated that a right is an aspect that is related to a benefit, or a benefit that has been determined based on legal provisions. Rights are legally recognised benefits. Rights are also a benefit that is determined for humans,

[34]Wahbah Al-Zuḥailī, *Mausū'ah Al-Fiqh Al-Islāmī wa Al-Qaḍāyā Al-Mu'āṣirah*, Juz' 7, (Damascus: Dār Al-Fikr, 2010), Juz' 10, pp. 63-64.

[35]Wahbah Al-Zuḥailī, *Al-Fiqh Al-Islāmī wa Adillatuh*, Volume 6, (Transl: Abdul Hayyie al-Kattani, et al), (Jakarta: Gema Insani Press, 2012), p. 449. 449.

[36]Muḥammad Amīm Barkatī, *Ta'rīfāt* Fiqhiyyah, (Beirut: Dār al-Kutb al-'Ilmiyyah, 2003), pp. 80; Alī ibn Muḥammad Al-Jurjānī, *Mu'jam Al-Ta'rīfāt*, (Taḥqīq: Muḥammad Ṣiddīq Al-Minsyāwī), (Riyad: Dār Al-Faḍīlah, 2004), pp. 79.

[37]Wahbah Al-Zuḥailī, *Al-Fiqh Al-Islāmī wa Adillatuh*, Volume 4, (Transl: Abdul Hayyie al-Kattani, et al), (Jakarta: Gema Insani Press, 2012), pp. 363-364; Muṣṭafā Aḥmad Al-Zarqā, *Al-Madkhal ilā Naẓariyyah Al-Iltizām Al-Āmmah fī Al-Fiqh al-Islāmī*, (Damascus: Dār al-Qalam, 1999), pp. 19; See also in the explanation of 'Ali Al-Syirbajī, *Ḥuqūq Al-Insan fi Al-Islam*, (Damascus: Al-Yamamah, 2002), pp. 8.

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individuals or legal entities or one party over another, and that benefit is benefit, and something will not be considered a right unless it has been determined by sharia and religion, or law, order, law and custom. Thus, the meaning of rights is the benefits and advantages that the legislator decides to benefit the owner and enjoy the benefits, thus it is the duty and obligation of one party or the other party to implement it, and the rights may be established by a specific legal system, special laws, international declarations, or international bilateral agreements.[38]

Property rights are specific to property only. Property is whatever is possessed of anything. On that basis, anything received that belongs is called property.[39] Ownership, *al-milkiyyah*, is a relationship between a person and a property recognised by *Shāri'* that makes him have special power over the property so that he can take legal action against the property unless there is a Shara' impediment. [40]

Such a concept of ownership cannot be separated from the concept of rights, because ownership is closely tied to rights. Therefore, some jurists define ownership with property rights, which is the power that a person has in using the property he owns, without having to first ask for the consent of others. However, according to Islamic law, the use of the property does not violate the principles of Islamic law and there is no *shar'i* barrier.[41]

The causes of ownership in Islamic law can be obtained through four ways, namely:[42]

a. Ownership of property through the control of property that is not yet owned by a person or legal institution, called permissible property. For example stone or sand in the river that is not yet owned by a person or legal entity. Another example is fish in the sea or river. Ownership like this is called *ihraz al-mubahat*.[43]
b. Ownership of property through a transaction carried out such as buying and selling, grants and waqf.

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[38]Muḥammad Al-Zuḥailī, *Ḥuqūq Al-Insan fi Al-Islam*, (Damascus: Dar Al-Kalim, 1997), pp. 9.

[39]Muḥammad Abū Zahrah, *Al-Milkiyyah wa Naẓāriyyah Al- Aqd fī Al-Sharī'ah Al-Islāmiyyah*, (Egypt: Dār Al-Fikr Al-'Arabī, 1962), p. 15. 15.

[40]Abdul Rahman Ghazaly, Ghufron Ihsan, and Sapiudin Shidiq, *Fiqh Muamalat*, 1st, Cet. 4th ed. (Jakarta: Kencana Prenada Media Group, 2015), pp. 46-47.

[41]Andri Soemitra, *Sharia Economic Law and Fiqh Mu'amalah in Financial Institutions and Contemporary Business* (Jakarta: Kencana Prenada Media Group, 2019), p. 22. 22.

[42]Mardani, *Fiqh Economics* ..., pp. 66-67.

[43]Ghazaly, Ihsan, and Shidiq, *Fiqh Muamalat* ..., p. 49.

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c. Ownership of property through someone's legacy, such as inheritance from the heir who has died.
d. Ownership through the results or fruits of property that has been owned by someone, whether the results come naturally, such as the fruit of trees in the garden, calves born, through the efforts of ownership, such as trade profits earned by traders, salaries earned by workers.

Article 18 of the Compilation of Sharia Economic Law (KHES) stipulates that property rights can be obtained in eight ways, namely exchange, inheritance, grants, natural increase, sale and purchase process, *luqathah*, waqf, and other ways that are justified according to sharia.[44] The other means referred to here are any means as long as the way of acquiring rights here is justified in Islam.

Property from the aspect of ownership is divided into private property and public property. Private property is property that is owned by a particular individual, and other people do not have the right to use the property arbitrarily. Private property may not be distributed among the people and may not benefit from the property.[45] As for public property is property owned by the general public. This property is for the benefit and use of the public such as the wind and the sea. Therefore, each individual and the government is responsible for maintaining this property, the government is responsible for maintaining this property for the public interest.[46]

The concept of property ownership in Islam is divided into two forms, namely *milk al-tām* and *milk nāqiṣ*.

a. Ownership *al-tām* is an ownership that includes objects and benefits at the same time, meaning that ownership here is ownership of one property as a whole both objects and advantages. In *al-tām* ownership, the owner of the property has all the rights related to his property in accordance with the law. [47]*Milk tām*) is a property right that includes control over the object (its substance) and the benefits of the object as a whole.[48] The most essential characteristic of *milk tām* is that ownership is permanent and is not limited by a specific period as long as the thing

[44]Mardani, *Fiqh Ekonomi...*, p. 67.
[45]Nilam Sari, *Contractual Agreements and Their Implementation in Islamic Banking in Indonesia*, (Banda Aceh: PeNA Foundation, 2015), p. 30. 30.
[46]Nilam Sari, *Contract...*, p. 30.
[47]Al-Zuḥailī, *Al-Fiqh Al-Islāmī...*, pp. 32-33.
[48]Abdul Manan, *Sharia Economic Law in the Perspective of the Authority of Religious Courts,* 4th ed. (Jakarta: Kencana Prenada Media Group, 2016), pp. 48.

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owned still exists and cannot be cancelled.[49] The special feature of this concept of *tām* ownership is that from the beginning, the ownership of the material and the benefits of the property is perfect. This means that the object of property becomes the whole property and the right of the owner. Perfect ownership is not preceded by anything previously owned. In a sense, that the material and benefits already exist since the ownership of the object exists. Another characteristic of perfect ownership is that it is not limited by time and cannot be cancelled by other parties who have no interest in it.

b. Ownership of *nāqiṣ*, which is ownership of only the object or its benefits.[50] In other words, *milk nāqiṣ* is ownership in which a person has only one of two things: either he owns the thing without owning its benefit, or he owns the benefit (utility) without owning the thing. *Milk nāqiṣ* comes in two forms:
   1) Ownership *nāqiṣ* in the form of ownership *al-'ain*, owning the object only. Meanwhile, the benefit is owned by someone else. For example, if a person makes a will stipulating that another person live in their house for three years, the latter owns the property.
   2) The ownership of *nāqiṣ* is in the form of ownership of *al-manfa'ah*, i.e., owning the benefit only or *ḥaq manfa'ah*. Similar to living in a rented house, the tenant has only the right to rent and use the house for a specific period. In substance, the house still belongs to its owner. Similarly, in *ariyah* (borrowing and lending), the borrower (*musta'ir*) only has the right to benefit, while the borrowed goods remain the property of the owner of the goods (*mu'ir*). [51]

D. Juridical Review of the Status of Copyright Holders for Online Application Creation

This section will analyze the juridical review, in the sense of the law, of the status of copyright holders in the creation of online applications. In the context of Indonesian law, the provisions of copyright law are contained in Law Number 28 of 2014 concerning Copyright (IPR). IPR regulates the existence of a strong legal relationship between the creation and its direct creator and copyright holder. The intended relationship is in the form of legal relations, in the form of, but not limited to, the creator's ownership of the copyrighted work he has created.

[49]Al-Zuḥailī, *Al-Fiqh Al-Islāmī...*, pp. 32-33.
[50]Manan, *Economic Law...*, p. 48.
[51]Rozalinda, *Sharia Economic Jurisprudence Principles and Implementation in the Islamic Financial Sector* (Jakarta: Rajawali Pers, 2019), p. 30. 30.

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Juridically, there are no strict rules that establish the status of copyright holders of online application creation. The IPR does not describe in detail the determination of the copyright of an online application, including website creation applications, *e-commerce*, *streaming*, and other applications, including the current development of online application products developed by companies or organisations, such as Open Artificial Intelligence (OpenAI), such as ChatGPT, DALL-E, and GPT-4 applications in international companies.

According to Article 40, paragraph (1) of the IPR, the provisions only stipulate the general types and specifications of products created by science, computer programs, compilations of works or data, in both formats that computer programs and other media can read.

The importance of tracing the copyright status of this online application lies in the potential for disputes between users and the original creator. Online application copyright disputes arise when an online application is deemed to infringe on the copyright of another application. This infringement can be in the form of, but not limited to, ownership claims between the creator of the application and the user of the application, or it can also be an infringement in the use of similar code, design, or features without permission, or the use of copyrighted works in the application without a license. Therefore, this aspect must be regulated in more detail in the law.

There are many cases of online application copyright lawsuits. Among them, for the foreign context, recently, *The New York Times*, a major media company based in the United States, filed a lawsuit against *ChatGPT* owner *OpenAI*, alleging that its copyright had been violated. Not only was the artificial intelligence (AI) company sued, but Microsoft was also sued. The New York Times holds the defendants liable for damages for copyright infringement of their online applications. *ChatGPT* is known as a Large Language Model (LLM) that analyzes most of the data sourced from the internet, including that published in The New York Times.[52] In Indonesia, a similar case also occurred, the online application for the use of *web domain*

[52]Ferinda K. Fachri, "The New York Times Sues OpenAI and Microsoft Over Alleged Copyright Infringement," hukumonline.com, 2024, https://www.hukumonline.com/news/a/the-new-york-times-suits-openAI-and-microsoft-over-alleged-copyright-infringement-lt65981e7d77fc1/.

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names and *blog* addresses, such as the site domains www.mustikaratu.com and www.sony-ak.com.[53]

Juridically, the IPR does not further specify the status of copyright holders of online applications. If referring to Article 1, point 2 of the IPR, the creator is the party that creates a person or several people who, individually or jointly, produce a creation that is unique and personal. This definition certainly requires further analysis in the context of online applications, specifically whether the creator is the creator-provider of the application or the user-contributor, who provides designs, images, and other content used by the creator-provider. A creator-provider is a term that refers to an individual or entity that has two leading roles: creating content (creator) and providing that content (provider). In simple terms, they are individuals who create something and then give or share it with others. According to Article 1, point 2 of the IPR, it is unclear which party holds the status of copyright holder. On the one hand, the *creator-provider* is indeed the *creator* of the application; on the other hand, the *user* also contributes to its creation, even though the user-contributor has no direct expertise in developing the online application.

Judging from this aspect, the provisions of the IPR can be said not to have reached the whole of the determination of copyright status, in addition to the absence of accurate and definite limits on what is meant by the *creator* and copyright holder for the context of *creator-provider* and *user-contributor* in the creation of online applications. This certainly creates legal uncertainty, especially for user-contributors, as the creator-provider can sue them at any time for the application they use. However, the various online applications being developed today offer numerous benefits for businesses. Some online applications that exist today, whether in the form of websites, blog domains, e-commerce platforms, or streaming services, are used specifically for commercial purposes.

Based on the analysis, the author concludes that, from a juridical point of view, especially after analysing the articles contained in the IPR, both the article on the creator, copyright holder, creation, and the scope of copyright, then the status of the copyright holder on the creation of online applications ideally is the right of the creator-provider in full. Because the creator-provider is the creator of the application, although there is a contribution from the user,

[53]Sri Wasiyanti, "Dispute Resolution of Domain Name Grabbing (Cybers Quating): Case Study of Sony Arianto Kurniawan (Sony A.k.) Vs Sony Corp. (Japan)," *Journal of Equator Informatics* Vol. 11, no. 2 (September 2011): 166-73, https://doi.org/ 10.31294/jc.v11i2.3568.

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in this context, contributions (in the form of designs, images, and components for online applications) are reprocessed through the knowledge possessed by the *creator-provider*. This is different if the condition is that the *creator-provider* consciously grants the user-contributor the right, so that the user-contributor can be considered a copyright holder. This is in line with the provisions of Article 1, point 4 of the IPR, which states that the copyright holder is the creator as the owner of the copyright, the party who receives the right legally from the creator, or other parties who receive further rights from the party who gets the right legally. Therefore, if the creator of the online application has granted its copyright, and the user-contributor has obtained the right legally from the creator, then the status of the copyright holder is that of the *user-contributor* or user of the online application.

Even so, there are challenges in applying Copyright Law to cases involving online applications, particularly in terms of the process or procedure for dispute resolution when there is a violation of rights or economic exploitation. Because juridically, copyright-related regulations in the IPR have not fully accommodated aspects of distributive justice between application creators and users who also contribute to the creation of these online applications. To that end, the author recommends that the IPR ideally provide legal certainty regarding the content or legal material on classification and offer a more detailed description of the rights of the *creator-provider* and *user-contributor*. The trick is to conduct a comprehensive revision that enables the juridical legal aspects to protect everyone, while also providing certainty and justice for the parties. No less important is that this revised juridical aspect will always remain relevant to current technological developments, enabling it to address and resolve various problems faced by the community, both on behalf of individuals, community groups, legal entities, or corporations.

E. Sharia Economic Law Review of the Status of Copyright Holders for Online Application Creation and its Consequences on Ownership

The current state of globalization, as well as the development of science and technology, has a significant impact on the order, operational patterns, and procedures for muamalah interactions in Muslim society. A Muslim is required to be "*literate*" in technology in running his business. The technology that is developing today requires that Muslims engaged in business and marketing utilise existing technology. After all, technology products,

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including online application products, can directly provide convenience in organizing their economic activities and daily tasks.

From the perspective of Islamic economic law, copyright falls under the category of private property rights recognized by Islam. This property right consists of the right to use, manage, and benefit from a creation. In Islamic law, copyright ownership must fulfil the principle of benefit (*maṣlaḥah*). The principle of benefit in this ownership covers various aspects, both in terms of property or specific products, as well as from the aspect of the parties and what the product is used for (*taṣarruf* kan). Beneficence or *maṣlaḥah* is goodness and benefit, or rejecting harm and taking benefit (goodness).[54] By fulfilling the principle of *maṣlaḥah*, other principles, such as transparency, justice, and the principle of not harming other parties by sharing profits evenly, will automatically emerge if the ownership is used for commercial purposes.

The products of technological development, including the creation and use of online applications, have not escaped the attention of Islam. Islamic law is universal,[55] And thorough (*syumūl*), so that in its various aspects, including online application copyright, can also be reviewed from the perspective of Islamic law, especially in the field of Sharia economic law.

In the review of Islamic economics, the status of copyright holders in the creation of online applications is closely related to the theory of ownership. In this theory of ownership, a person has the right to what he has done. This ownership can be in the form of joint ownership, where each owner of a product, object, or other has contributed to its production. Ownership of certain products and objects can be obtained through transactions, including buying and selling. For example, the creator of an online application can sell the application they have created to other parties as users. Although at a moral level, the application remains attached to the creator because he is the creator. Therefore, in the theory of ownership in Islam, they are known *asbāb kasb milkiyyah* (causes of obtaining ownership), one of which is by sale and purchase (*bai'*).[56] After the sale of the app, the user (not the original creator)

[54]Muḥammad Sa'īd Ramaḍān Al-Būṭī, *Ḍawābiṭ al-Maṣlaḥah fī Syarī'ah Al-Islāmiyyah* (Beirut: Mu'assasah al-Risālah, 1973), pp. 23; Yūsuf Al-Qaraḍāwī, *Al-Siyāsah Al-Syar'iyyah fī Ḍau' Nuṣūṣ Al-Sharī'ah wa Maqāṣiduhā*, (Transl: Fuad Syaifudin Nur), (Jakarta: Pustaka Al-Kautsar, 2019), pp. 110; Yūsuf Al-Qaraḍāwī, *Dirāsah fī Fiqh Maqāṣid Al-Sharī'ah Baina Maqāṣid Al-Kulliyyah wa Al-Nuṣūṣ Al-Juz'iyyah*, 1, (Transl: Arif Munandar Riswanto), 3rd ed. 3rd ed. (Jakarta: Pustaka Al-Kautsar, 2018), pp. 45.

[55]Yūsuf Al-Qaraḍāwī, *Madkhal li Dirāsah Al-Sharī'ah Islāmiyyah*, (Transl: Ade Nurdin and Riswan), (Bandung: Mizan Pustaka, 2018), p. 133. 133.

[56]Mardani, *Fiqh Economics...*, pp. 66-67.

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owns the app in full (*milk al-tām*), including both the app and its utilization. Therefore, this is in accordance with the concept of property rights in Islam, which is the benefit recognized by law to an object that can provide benefits to the owner and yield profits.[57]

The status of copyright holders of online applications through the process of ownership by way of sale and purchase (*bai'*) above applies in conditions if the creator or *creators of* the application, individually or jointly in the manufacturing process, are sold to others. This means that the seller and the creator of the application had no prior relationship in developing the application.

Apart from the sale and purchase process, ownership of the application can also be transferred through a grant process from the creator to other individuals who wish to use and utilize the online application. The ownership of this online application can also be transferred by inheritance, specifically when the original creator passes away and the online application is then used as an inheritance property for their heirs. However, what needs to be underlined is that whether ownership through sale and purchase (*bai'*), grant (*hibah*), or through the inheritance process (*wāris/farā'iḍ*) does not transfer the copyright owned by the creator, but only owns the application, and can also become a copyright holder if it has a licence or written permission from the creator.

In the review of Islamic economic law, copyright holders in the creation of online applications can also be viewed as having joint ownership with others who have contributed to producing and presenting the application. In fiqh terms, this form of ownership is known as joint ownership or milk al-musytarak, which refers to ownership whose benefits can be used by several people formed in a certain way, such as cooperation between two parties involving several people without producing a product.[58] In this context, an online application product can be owned by two or more people if one of them has contributed significantly to its creation. For this reason, other people who do not contribute as the direct creator of the application do not have rights to the creation, including the *user-contributor*, because the *user-contributor* only orders the online application to be made by the direct creator even though the *user* provides the format, graphic images, and components that must be contained in the application. Even so, the original *creator* is a *creator-provider*

[57]Al-Zuḥailī, *Ḥuqūq Al-Insan fi Al-Islam,* p. 9.
[58]Wahid, *Economic Law...*, p. 124.

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who is familiar with the field of information and digital technology. For this reason, *users* only have property rights to the online application, not copyright. *Users* or users only have the status of copyright holders, but not that of original creators.

CONCLUSION

Based on the analysis of the status of copyright holders in the creation of online applications from a juridical and Sharia economic law perspective, two conclusions can be drawn. *First*, from a juridical point of view, IPR has not regulated the status of online application copyright holders in detail; however, upon analysis, it can be understood that the copyright or copyright holder is the creator-provider in full, not the user. The creator holds the position as the original creator of the application, regardless of the contributions made by the user. However, suppose the creator-provider consciously licenses the user-contributor. In that case, the user becomes the copyright holder, even though it does not eliminate the original copyright status attached to the creator.

From the perspective of Islamic economic review, the online application can become property rights through direct creation, the bai' (sale and purchase) process, the grant process, and the inheritance process. For the user, status is only as the owner if the Bai, grant, and inheritance contracts have been completed. Thus, copyright remains attached to the original *creator* or *creator-provider*. In this case, the user can be upgraded to a copyright holder if they have obtained a license or written permission from the original creator. Thus, in the review of Sharia economic law, the status of the copyright holder in the creation of online applications can be attributed to the personal creator or to the co-creator for the *milk musytarak* category. The copyright holder can be provided to other parties who obtain a license or written permission, but the copyright remains attached to the creator in origin. From the viewpoint of ownership (milkiyyah), everyone can have an online application, either owned by the creator because he created it, or by other people through the process of buying and selling (bai'), grants, or inheritance.

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