

The View of Positive and Islamic Law Against Uploader Copyright

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| Artikel | Abstract |
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| <p>Keywords: Youtube; copyright works; Islamic Law</p> <p>Artikel History: Submission: 2023-03-11 Accepted: 2023-04-29 Published: 2023-04-29</p> <p>DOI: 10.30999/jph.v5i2.2516</p> | <p>YouTube is a platform that is included in the protected cinematographic copyright. In this era of technology and creative industries, there are many people who commit criminal acts of video piracy on the YouTube platform and even broadcast without permission and get benefits. But for the creator, it is very detrimental. The subject matter studied in this research is about how copyright protection for YouTube uploaders in Article 40 of Law Number 28 of 2014 concerning Copyright and the perspective of Islamic law on copyright protection for YouTube uploaders. This research is a normative legal research using legislative and normative Islamic approaches. The results showed that copyright protection of YouTube uploaders is regulated in Law Number 28 of 2014 concerning Copyright which is technically regulated in Article 40 paragraph (1) letter m, although not specifically mentioned in the article but there are similarities in audiovisual form. When viewed in Islamic law, the act of YouTube re-uploader is included in jarimah ta'zir whose punishment is given to Ulil Amri (government).</p> |
| Abstrak | |
| <p>Youtube; hak cipta; karya cipta; Hukum Islam</p> | <p>YouTube merupakan platform yang termasuk dalam hak cipta sinematografi yang dilindungi. Di era teknologi dan industri kreatif ini, banyak sekali oknum-oknum yang melakukan tindakan kriminal pembajakan video di platform YouTube bahkan menyiarkannya tanpa izin dan mendapatkan keuntungan. Namun bagi pencipta, hal tersebut sangat merugikan. Pokok permasalahan yang dikaji dalam penelitian ini adalah mengenai bagaimana perlindungan hak cipta bagi pengunggah YouTube dalam Pasal 40 Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta dan perspektif hukum Islam terhadap perlindungan hak cipta bagi pengunggah YouTube. Penelitian ini merupakan penelitian hukum normatif dengan menggunakan pendekatan perundang-undangan dan pendekatan normatif Islam. Hasil penelitian menunjukkan bahwa perlindungan hak cipta terhadap pengunggah YouTube diatur dalam Undang-Undang Nomor 28 Tahun 2014 tentang Hak Cipta yang secara teknis diatur dalam Pasal 40 ayat (1) huruf m, meskipun tidak disebutkan secara spesifik dalam pasal tersebut</p> |

namun terdapat kesamaan dalam bentuk audiovisual. Jika ditinjau dalam hukum Islam, perbuatan pengunggah ulang YouTube termasuk dalam jarimah ta'zir yang hukumannya diserahkan kepada Ulil Amri (pemerintah).

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Introduction

One of the gifts given by Allah SWT is the blessing of reason, as referred to in surah at-Tin verse 4, indeed that “we have Created Man in the best possible form.” It is this wisdom that makes humans perfect. With this mind, humans can choose between good and bad and are able to innovate by creating something new to make their lives easier. The innovation created by humans is an invaluable wealth, which then the ideas and ideas are poured into a medium.¹ In Undang-Undang Nomor 19 Tahun 2002 concerning Perlindungan Hak Cipta, dalam ruang lingkup Hak Kekayaan Intelektual, within the scope of Intellectual Property Rights the media is called a copyrighted work or creation.

Inventions and works of art have had a huge impact on human life.² When a result of human creativity is used for commercial purposes, there is a thought that there needs to be special respect for one's intellectual work and the rights that arise. Basically, the concept of Intellectual Property Rights is a form of appreciation of the work of human creativity, Intellectual Property Rights (HAKI) is a property right, the right to an object that comes from the work of the brain, and the work of the ratio.³ In Indonesia, the system of intellectual property rights has existed since the Dutch East Indies colonial era, namely with the issuance of IPR regulations which include Auteurswet 1912 Stb. 1912 No.600 for copyright protection, Reglement Industriële Eigendom Kolonien Stb. 1912 No. 545 jo. Stb.⁴

One form of intellectual work is copyright. Objects protected by copyright include science, art, and literature. One of the copyrights in the field of art is making videos and then uploading them to social media. Along with the development of science and technology, products related to the results of art have also played a role in improving the community's economy. One of the social media destinations for uploading videos that are the result of their work is Youtube.

As you know, this app is a video-sharing website created by three former *PayPal* employees in February 2005 which was later bought by Google in 2006.

¹ Agus Suryana, “Hak Cipta Perspektif Hukum Islam,” *Al-Maslahah Jurnal Hukum Islam dan Pranata Sosial* 3, no. 05 (October 31, 2017), <https://doi.org/10.30868/am.v3i05.144>.

² Eddy Damian, *Hukum Hak Cipta* (Bandung: Alumni, 2014).

³ Asian Law Group pty.ltd, *Hak Kekayaan Intelektual Suatu Pengantar* (Bandung: Alumni, 2006).

⁴ Anak Agung Mirah Satria Dewi, “Perlindungan Hukum Hak Cipta Terhadap Cover Version Lagu Di Youtube,” *Jurnal Magister Hukum Udayana (Udayana Master Law Journal)* 6, no. 4 (December 31, 2017): 508–20, <https://doi.org/10.24843/JMHU.2017.v06.i04.p09>.

The website allows users to upload, watch, and share videos. The company is headquartered in San Bruno, California, and uses *Adobe Flash Video* technology and *HTML* to display a wide variety of user/creator-generated video content, including movie clips, TV clips, and music videos. In addition, amateur content such as video blogs, short original videos, and educational videos are also on the site.

In recent years, a creative idea has emerged in making cinematographic works, namely video blogs which are then uploaded on Youtube. However, in its development, videos uploaded to Youtube are utilized specifically to have high economic value among the wider community. So that many youtubers have sprung up in the country. Not infrequently this also opens up opportunities for copyright infringement of video works that are uploaded back to Youtube without the knowledge and permission of the owner of the work, this is called a youtube re-uploader. The issue of video piracy/re-uploading on YouTube is increasingly becoming a cause for concern.

In 2014 the Indonesian government passed a regulation on copyright, namely Law Number 28 of 2014 concerning Copyright (hereinafter referred to as UUHC) as a legal umbrella in protecting various copyrighted works or creations made by the creator. The creations protected by this rule are human creative works that come from intellectual sources both in the fields of science, art and literature as stipulated in article 1 number 3 of the UUHC.⁵ In addition, as a country where the majority of the population is Muslim. In July 2015 the *Majelis Ulama Indonesia* (MUI) issued a fatwa on the protection of Intellectual Property Rights (IPR) contained in the copyright. All Muslim scholars have prohibited eating other people's property with unlawful. However, this problem causes unrest considering the trend of youtube re-uploads has only occurred in the last few years after the UUHC was passed, in addition to the lack of public understanding of whether youtube video re-upload activities include criminal offenses or not. Based on the things that have been described, the authors are interested in conducting research with the title "Copyright Protection of Youtube Uploaders in Article 40 No. 28 of 2014 concerning Copyright in the Perspective of Islamic Law".

There are several studies that discuss copyright. Among them is research with the title "*Esensi Perlindungan Hak Cipta Atas Karakter Fiktif*". This study uses a statute approach, concluding that fictional works in the form of cinematography, literary works, plays, books, novels, comics and video games often produce a fictional character that becomes the basis for these works where the character is an important element used by the creator or author to support the theme and

⁵ I. Made Marta Wijaya and Putu Tuni Cakabawa Landra, "Perlindungan Hukum Atas Vlog Di Youtube Yang Disiarkan Ulang Oleh Stasiun Televisi Tanpa Izin," *Kertha Semaya: Journal Ilmu Hukum* 7, no. 3 (January 17, 2019): 1–15, <https://doi.org/10.24843/KM.2019.v07.i03.p08>.

conflict. Fictional characters can also be valuable assets for the creator or copyright holder given the economic and moral value of the characters.⁶

Furthermore, the research entitled “*Perlindungan Hukum Hak Cipta Lagu Di Indonesia Dan Malaysia*”. This research method uses normative juridical research methods with a comparative approach to the concept of Indonesian and Malaysian law, concluding that the National Collective Management Institution and Music Right Malaysia has the right to have the same characteristics, namely as an independent intuition and has the attributive authority to make legal remedies for copyright infringement songs, MRM has a range of royalty withdrawal that is more sempid than LMKN, MRM has no obligation to mediate in the event that the case is a civil case, legal remedies that can be done by LMKN and MRM can be through the criminal or arbitration path in cassuitis, the enforcement of copyright infringement of songs across countries is to apply the concept of International Civil and or Criminal law.⁷

The last research entitled *Perlindungan “Karya Cipta Lagu Dan/Atau Musik Yang Dinyanyikan Ulang (Cover Song) Di Jejaring Media Sosial Dikaitkan Dengan Hak Ekonomi Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta.”* This research uses a descriptive method of analysis with a normative juridical approach. Concluding that the use of copyrighted works of songs and/or music that are re-sung on social media networks is not a violation of moral rights if it is not done for commercial purposes and no changes are made to the creation according to the provisions of article 8 of the UUHC, but it is an act that violates economic rights if it is utilized for commercial activities without the permission of the creator as according to article 9 of the UUHC. Legal protection can be done through legal action, namely through arbitration or through civil lawsuits filed with the commercial court and criminal charges filed with the district court, as well as through other actions through features provided by social media networking sites.⁸

In previous studies that have been described above, there has been no discussion of the protection of youtube uploader copyright, therefore the difference in the discussion that will be reviewed and researched by the author is about the protection of youtube uploader copyright in article 40 Number 28 Year 2014 About Copyright perspective of Islamic law. In this study, the authors limit the scope of this research to the articles contained in Law Number 28 of 2014 concerning Copyright, namely only article 40 concerning protected copyrighted works. In addition, it is also seen from the view of Islamic law regarding the

⁶ Michael Hans, “Esensi Perlindungan Hak Cipta Atas Karakter Fiktif,” *MIMBAR YUSTITIA* 2, no. 1 (December 5, 2018): 60–78, <https://doi.org/10.52166/mimbar.v2i1.1291>.

⁷ Franciska Mifanyira Sutikno and Indah Dwi Miftachul Jannah, “Perlindungan Hukum Hak Cipta Lagu Di Indonesia Dan Malaysia,” *Literasi Hukum* 3, no. 1 (April 30, 2019): 14–25.

⁸ Ghaesany Fadhila and Sudjana Sudjana, “Perlindungan Karya Cipta Lagu Dan/Atau Musik Yang Dinyanyikan Ulang (Cover Song) Di Jejaring Media Sosial Dikaitkan Dengan Hak Ekonomi B Berdasarkan Undang-Undang Nomor 28 Tahun 2014 Tentang Hak Cipta,” *ACTA DIURNAL Jurnal Ilmu Hukum Kenotariatan* 1, no. 2 (June 29, 2018): 222–35.

protection of youtube uploader copyright, from the focus of this research, the authors produce 2 (two) research questions, namely: 1) How is the protection of Youtube uploader copyright in article 40 of Law Number 28 Year 2014 on Copyright, and 2) How is the view of Islamic law on copyright protection against Youtube uploaders.

Research Methods

The type of research used in this research is qualitative normative legal research. Normative legal research method is a method of legal research in the scope of its research is norms, rules, principles, theories, rules of law and philosophy which will later seek answers to these problems either in the form of legal vacuum, norm obscurity or norm conflict.⁹ While the approach used in this research is legislation (*statute approach*) and *normative approach*. *Statutory approach* (*statute approach*), which is a method of approach taken by examining legislation and matters relating to Law Number 28 of 2014 concerning Copyright. While the *normative approach* is a method of approach in research that views a problem based on formal legal, namely a recommendation contained in the text related to halal, haram, permissible or not and the like. In this case it is done by looking at the basic values of Islamic law regarding copyright protection.¹⁰

Results and Discussion

Copyright Protection of Youtube Uploaders in the Copyright Law

Audiovisual media is a series of electronic images accompanied by audio sound elements that also have elements of images poured through video tape. The series of electronic images is then played with a device, namely a video cassette recorder or video player. Meanwhile, Barbabara suggests that audiovisual media is a way of producing and delivering materials using mechanical and electronic equipment to present audio-visual messages.¹¹

Based on this understanding, it can be concluded in general that the definition of audiovisual is a series of interrelated images that can be displayed by several devices and accompanied by sound on the visual part of the work. Movies are one type of audiovisual work, because movies consist of images that when displayed give the impression of motion. In addition to movies, audiovisual works have a relatively broader category, including slide shows, CCTV recordings, music videos and others.

Legal arrangements related to audiovisuals can be found in various regulations and conventions, both national and international in nature. One of them is the Treaty of the international Registration of Audio Visual Works made

⁹ Yati Nurhayati, Ifrani Ifrani, and M. Yasir Said, "Metodologi Normatif Dan Empiris Dalam Perspektif Ilmu Hukum," *Jurnal Pengakuan Hukum Indonesia* 2, no. 1 (January 17, 2021): 1–20, <https://doi.org/10.51749/jphi.v2i1.14>.

¹⁰ Khairuddin Nasution, *Pengantar Studi Islam* (Yogyakarta: Academia dan Tazzafa, 2007): hlm. 149.

¹¹ Lelia Green, *The Internet An Introduction to New Media* (United Kingdom: MPG Books Group, 2010).

in 1989. This convention aims to increase legal certainty in transactions relating to audiovisual works and to increase the creation of audiovisual works and the international flow of such works and contribute to combating piracy of audio visual works and the contributions contained therein. So that every country that is a member of the convention or ratifies this convention must implement the regulation regarding audiovisual works.

In Indonesia, legal arrangements regarding audiovisual and audiovisual copyright have not been specifically regulated in legislation. However, Article 40 paragraph (1) of Copyright Law No. 28 of 2014 concerning Copyright describes the objects that are protected by copyright, namely: a) Books, pamphlets, embellishments of published works, and all written works; b) Lectures, lectures, speeches, and other similar creations; c) Teaching aids made for the benefit of education and science; d) Songs and/or music with or without text; e) Rhythm, musical drama, dance, choreography, puppetry, and pantonymy; f) Works of fine art in all forms such as paintings, drawings, engravings, pottery, sculpture, or collage; g) Works of applied art; h) Works of architectural art; i) Maps; j) Works of batik art or other motif art; k) Photographic works; l) Portraits; m) Cinematographic works; n) Translations, interpretations, adaptations, anthologies, databases, adaptations, arrangements, modifications and other works of transformation; o) Translations, adaptations, arrangements, transformations, or modifications of traditional cultural expressions; p) Compilations of creations or data, either in formats that can be read by computer programs or other media; q) Compilations of traditional cultural expressions as long as the compilation is an original work; r) Video games; and s) Computer programs.

Point (m), namely Cinematographic Works, has the meaning contained in the explanation section of Copyright Law No. 28 of 2014, which explains that:

"What is meant by "cinematographic work" is a creation in the form of moving images, including documentary films, advertising films, reportage or story films made with scenarios, and cartoon films. Cinematographic works can be made on celluloid tapes, video tapes, video discs, optical disks and/or other media that allow them to be shown in theaters, big screens, television, or other media. Cinematography is one example of an audiovisual form."

While the definition of audiovisual works in Youtube is a work that includes TV shows, movies, and online videos where music, vlogs (video blogs) are works included in the works protected in Youtube.¹² From the explanation, it is clear that audiovisual works include cinematography, but are broader. Audio visual also includes slideshows, CCTV footage, music videos, amateur videos, camera recordings and any audiovisual work that is broadcast can be protected by

¹² Novita Intan, "Pajak Youtuber, DJP Punya Sistem Analisis Ketat," *Direktorat Jenderal Pajak* (blog), March 11, 2021, <https://www.republika.co.id/berita/qpsj1o370/pajak-youtuber-djp-punya-sistem-analisketat>.

copyright law because copyright law is a broad concept that aims to protect the creative aspects of the creator or copyright holder. Limited copyright does not protect the ideas of the creator, only if those ideas have been created in the form of works. Although not specifically mentioned in the copyright law in force in Indonesia, audiovisual copyrighted works remain protected in Indonesia.

In Youtube itself anyone has the ability to upload their work in audiovisual form, but not all uploaders upload their own work. Many found the uploader / uploader Youtube it performs copyright infringement in the form of re-uploader other people's work into his Youtube account to benefit from the hasi video uploaded / uploaded without the permission of the copyright holder.

In language, re-upload comes from an English term, consisting of two words, namely, "re" which can be interpreted as "repeat" or "return" and the word upload which is interpreted as "upload". In simple terms, uploading is the process of transmitting a file to another device through a network. This upload can be done with the internet network. Files will be transferred into the database of a server and then files that can be uploaded, ranging from images, movie songs, videos and various other files. One of the upload processes in question is uploading videos to the Youtube media site. While the youtube re-uploaders take the action of taking videos from other people's channels, which they then upload to their channel by simply changing the title of the video to be more interesting. The purpose of this YouTube video re-uploader is to simply make money on the internet in an easy way without thinking, without expertise, and cost-effectively without the need to create their own work.¹³

The loss experienced by the owner of the original video, due to the act of covering or re-uploading the video by YouTube uploaders, seen from the financial side, it could be that the re-uploaded video gets more views than the copyright owner, the original video, with more views automatically greater income obtained from advertisements displayed on Youtube. While the original video owner and uploader do not know each other, in other words, the uploader uploads the video to Youtube without the knowledge or permission of the original video owner.

In article 40 paragraph (1) letter m of Law Number 28 of 2014 concerning Copyright that youtube videos are included in the category of cinematographic works protected by the Copyright Act. Which copyright protection for creations in the form of cinematographic works is valid for 50 years from the time of announcement in accordance with isipasal 59 paragraph (1) UUHC. Announcement according to article 11 number 1 of the UUHC is the reading, broadcasting, exhibition, a creation by using any device either electronic or nonelectronic or do in any way so that a creation can be read, heard, or seen.

¹³ Fazlul Rahman, "Praktek Re-Upload Video Oleh Youtuber Dan Keabsahan Pembayarannya (Suatu Tinjauan Dari Perspektif Konsep Hak Ibtikar)," *Dusturiyah: Jurnal Hukum Islam, Perundang-undangan dan Pranata Sosial* 9, no. 2 (October 2, 2019): 157–78, <https://doi.org/10.22373/dusturiyah.v9i2.5318>.

So the film or video as a form of cinematographic work has basically been protected by copyright since the first announcement because the protection of the work is born automatically based on the declarative principle after a creation is realized in real form, it is based on article 1 number 1 UUHC. For the act of rebroadcasting a film or video via the internet without the authorization of the creator or copyright holder, a person may be subject to Article 113 paragraph (3) of Law Number 28 of 2014 concerning Copyright which reads:

"Any person who without rights and/or without the authorization of the creator or copyright holder infringes the economic rights of the creator as referred to in Article 9 paragraph (1) letter a, letter b, letter e, and/or letter g for commercial use shall be punished with imprisonment of 4 (four) years, and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah)."

Article 9(1) explains that:

"The creator or copyright holder as referred to in article 8 has the economic right to: a) Publishing of the Creation; b) Reproduction of the Creation in all its forms; c) Translation of the Creation; d) Adaptation, arrangement, or transformation of the Creation; e) Distribution of the Creation or copies thereof; f) Performance of the Creation; g) Announcement of the Creation; h) Communication of the Creation; and i) Leasing of the Creation."

Affirming the wording of article 8 which is mentioned in article 9 paragraph (1) that:

"Economic rights are the exclusive rights of the creator or copyright holder to obtain economic benefits from the creation."

From this article it is very clear that the act of re-uploading or broadcasting/re-uploading videos or films clearly violates the law and can be subject to criminal sanctions both imprisonment and fines. So that YouTube channel owners must be careful in uploading a video so as not to have problems in the future and not only focus on the number of viewers and income alone.

However, the phenomenon of re-uploader actions that occur today seems like an act that does not violate the law, there are still many channels that do reuploader of other people's videos to date, plus those who are victims of this reuploader action do not report the copyright infringement to the authorities then the violation of copyright works more and more and can not be controlled. So, it is necessary to intensify the socialization of copyright infringement so that people can understand that the act of Youtube re-uploader is actually prohibited and unlawful.

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View of Islamic Law on Copyright Protection Against Youtube Uploader

Islamic law is a system of rules based on the revelation of Allah SWT and the Sunnah of the Prophet regarding the behavior of mukalaf (people who can already be burdened with obligations) which is recognized and believed, which is binding for all adherents. And this refers to what the Prophet has done to implement it in total. Sharia in its term means the laws commanded by Allah SWT for His people brought by a Prophet, both relating to belief and relating to practice.¹⁴

The sources of Islamic law are the Quran and hadith. As laws and regulations revealed by Allah SWT, Islamic law has set lofty goals that will maintain human honor, namely as follows:¹⁵ *First*, maintaining religion, one of the human nature or instincts that cannot be denied and which humans really need is the need to embrace religion. In fulfilling this nature and instinct, Allah SWT prescribes that religion must be considered and maintained by everyone in all matters, both in terms of faith, worship, and *muamalah*. *Second*, maintaining the soul, the right to life is also the most basic right for humans. In order to maintain the benefit and safety of the soul and human life, Allah SWT prescribed various laws related to this matter. *Third*, maintaining the mind, that the mind is the main determining factor for a person in living life, so that Allah SWT makes maintaining the mind as one of the *dharuri* things. *Fourth*, maintaining position, having offspring is a basic problem for humans in maintaining their continuity in the world. *Fifth*, maintaining property, property is also a very determining factor in human life, because humans cannot live without property.

One of the objectives protected by Islamic law is the protection of property, the fiqh experts argue that something that can be called property must fulfill several elements, namely consisting of elements of economic value and benefits or services obtained from an item. Based on these two criteria, property can be in the form of concrete objects, or abstract objects. Economic value and benefits that become the criteria for property are determined based on *al-'urf* that applies in the community. In *al-Qawâid*, property is something that can be utilized both in the form of goods and services. The role of *al-'urf* is very important to

¹⁴ Eva Iryani, "Hukum Islam, Demokrasi Dan Hak Asasi Manusia," *Jurnal Ilmiah Universitas Batanghari Jambi* 17, no. 2 (July 25, 2017): 24–31, <https://doi.org/10.33087/jubj.v17i2.357>.

¹⁵ Muhammad Ali Rusdi, "Maslahat Sebagai Metode Ijtihad Dan Tujuan Utama Hukum Islam," *DIKTUM: Jurnal Syariah Dan Hukum* 15, no. 2 (December 22, 2017): 151–68, <https://doi.org/10.35905/diktum.v15i2.432>.

determine whether an item has the status of treasure or not. Assets that have economic value can be traded, and are subject to compensation for anyone who damages or eliminates them. And nowadays treasures have developed types and forms, one of which is about abstract treasures that have now developed, including, bitcoin, shares, and copyrights.

Regarding copyright, contemporary Muslim scholars argue that copyright or *haq al-ibtikâr* is a right of ownership of a copyrighted work owned by the creator or other parties who get the right.¹⁶ Therefore, copyright is very important because it is directly related to human creations that must be protected and appreciated because not everyone can create a work of thought.

As a new right within the scope of property rights, copyright is not written textually in either the Qur'an or hadith. It's just that both provide the basics for this issue. Discussion of copyright, cannot be separated from the theory of property ownership rights in Islam. In this theory, regulated how a property right is obtained, utilized and accounted for. The theory of ownership in Islam is different from the theory of ownership in capitalist ideology and also socialist. In Islam, every individual has the right to own an object or benefit needed for his survival, this ownership is called private ownership. Whereas in objects that are a necessity of life together then it is a right of common ownership, where it is not allowed for individuals to own it.¹⁷

Copyright as one of the forms of private ownership is based on the arguments that show that it is part of the ownership of an object. Because every creator of copyrighted works has special rights over his creation. The right to the results of a work is the property of the person who worked. If associated with the causes of a permanent right, then copyright exists due to the work and seriousness of a creator in making a copyrighted work.¹⁸

Copyright is a right that has material value, so it is equated with other property rights.¹⁹ Place of storage of property is something that is used as a place for the storage of movable property. The form is in accordance with the customs of each region, such as safes, cabinets, wallets, houses and others. if a thief takes from the place means he has committed theft. Copyright is an abstract form of property so that the place of storage is different from the concrete form of property. In the Qur'an letter An-Nisa verse 32 mentioned:

“And do not envy what Allah has granted some of you more than others. (For the men have a share of what they have earned, and the women have a share of what they have earned, and ask Allah for a portion of His bounty. Verily, Allah knows all things.”

¹⁶ Suryana, “Hak Cipta Perspektif Hukum Islam.”, hlm. 256.

¹⁷ *Ibid*,

¹⁸ Luthfi Assyaukanie, *Politik, Ham Dan Isu-Isu Teknologi Dalam Fikih Kontemporer* (Bandung: Pustaka Hidayah, 1998).

¹⁹ Oksidelfa Yanto, “Konvensi Bern Dan Perlindungan Hak Cipta,” *Jurnal Surya Kencana Satu: Dinamika Masalah Hukum Dan Keadilan* 6 (March 1, 2016): 108, <https://doi.org/10.32493/jdmhkdmmhk.v6i1.341>.

This verse clearly shows that everyone is entitled to the fruits of their labor. This means that men are entitled to the fruits of their labor, and women are also entitled to the fruits of their labor.

There is no doubt that the right to enjoy the fruits of one's labor is a privilege that belongs to him. He is entitled to benefit from the fruits of his labor. This privilege is the essence of copyright, a copyright will be recognized when it meets the following elements: First, the cause of copyright ownership of a creator with sincerity, diligence and scientific capital has made a copyrighted work that will benefit mankind. Second, the utilization of copyright, copyright as an exclusive right of the owner of the copyrighted work in Islam also has social rights, that for each individual to have ownership rights in Islam, although to the individual becomes a problem, as long as he keeps in the process of looking for his property in something halal. Third, the responsibility of copyright, actually treasure is not only something material but also benefits. Because the benefits are the value of a treasure. as where the benefits of a house is to be occupied.

Likewise copyright, it is a property right to property that becomes a medium for pouring ideas. Media pouring copyright is a property recognized by Islam because it meets the requirements as a treasure in shara'. Ikhwan mentioned that the properties of a property right, namely: First, the right always follow the object to where and wherever the object is located. Secondly, property rights give the owner more security than other debtors if the debt is accompanied by a pledge. Third, property rights fall or disappear with the destruction of the object of the right. Fourth, property rights are classified as absolute rights, so they are protected from other people.²⁰

If we look at the conditions that have been mentioned, then copyright cannot be separated with his copyrighted work. In addition, copyright can also be used as property if it has been poured on a medium. When a copyrighted work is not poured in a medium, then it is not a treasure and no protection to him. Since copyright is an individual property then others who utilize it must seek permission from the owner. The owner has the right to decide whether or not he takes compensation from the use of his copyrighted work.

In the case of YouTube re-uploaders, what often happens is that there are other parties who take as much profit as possible by reproducing other people's copyrighted works without the permission of the owner. From here it is clear that Youtube re-uploaders are taking the property rights of others without permission. The property rights are in the form of exclusive rights owned by the creator. Even a re-uploader earns so much profit from re-uplader activities, while the creator does not get anything.

Therefore, the actions of re-uploaders by taking other people's work which is then uploaded on their channel and getting money from these actions without

²⁰ Ikhwan, *Perlindungan Hak Cipta Menurut Hukum Nasional Dan Hukum Islam* (Jakarta: PT. Logos Wacana Ilmu, 1999).

the permission of the owner of the work is clearly contrary and violates *haq al-ibtikār* and ownership rights in Islam. As well as included in the criminal offense for taking other people's copyrights, where videos uploaded on Youtube by the creator are included in economically valuable property, in this case the video includes abstract property but has economic value where every video uploaded on Youtube and watched by many people will generate income from Youtube. Therefore, Youtube re-uploaders who carry out these actions can be subject to punishment for taking people's rights without permission and have clearly harmed the creator of the video. In Islam, the act of taking and eating other people is included in reprehensible acts and needs to be punished. Regarding the act of Youtube re-uploader is included in the new criminal offense. Because in ancient times the development of technology was not as rapid as it is today, including the Youtube platform whose existence appeared in 2005, so that this re-uploader crime is a new (contemporary) case that is not found in *jarimah hudud* and *jarimah qishash*, so it is necessary to use another approach, in this case using *jarimah ta'zīr*.

Jarimah ta'zīr is a criminal offense punishable by ta'zir, which is a punishment that is not clearly determined in the text either in the Qur'an or in the hadith relating to crimes that violate the rights of Allah and the rights of servants, serving as a lesson for the perpetrator and preventing him from repeating the same crime. It can be understood that ta'zir punishment is a punishment determined by the ruler (judge) against various forms of sin, whether it violates the rights of Allah or the rights of servants that are detrimental or disruptive to the general public interest.²¹

Regarding Law No. 28 of 2014 concerning Copyright which contains protected copyrighted works contained in article 40 paragraph 1 letter m in which the video uploaded to Youtube is included in the protected cinematographic works. If there is a re-broadcasting or re-uploader of other people's videos without permission, it will be subject to sanctions in Article 113 paragraph (3) of the Copyright Act with a maximum penalty of 4 years and / or a maximum fine of Rp. 1,000,000,000 (one billion) clearly although this law is not based on Islamic law, but the protection provided in principle is in accordance with Islamic law, where the protection of property ownership rights is one of the objectives of Islamic law, it includes the dharuri needs of every human being. Therefore when Islam recognizes copyright as one of the property rights, then the ownership will be protected as the protection of property.

²¹ Ahmad Syarbaini, "TEORI TA'ZIR DALAM HUKUM PIDANA ISLAM," *Ius Civile: Refleksi Penegakan Hukum Dan Keadilan* 2, no. 2 (April 25, 2019), <https://doi.org/10.35308/jic.v2i2.967>.

Conclusion

Copyright protection against Youtube uploaders is regulated in Law No. 28 of 2014 on Copyright technically contained in article 40 paragraph (1) letter m although Youtube is not specifically mentioned in the article when viewed in the form of both youtube and cinematography there is a similarity of audiovisual form then for Youtube re-uploaders who perform acts of rebroadcasting or duplication of youtube videos then may be subject to criminal sanctions as contained in article 113 paragraph (3) of Law No. 28 of 2014 on Copyright with a maximum imprisonment of 4 (four) years, and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). 28 of 2014 concerning Copyright with a maximum imprisonment of 4 (four) years, and/or a maximum fine of Rp. 1,000,000,000.00 (one billion rupiah). Then based on in-depth research that the youtube re-uploader's actions are included in *jarimah ta'zir*. Where the punishment is left to ulil amri or the government, the protection of property ownership rights is one of the objectives of Islamic law, it includes the dharuri needs of every human being. Therefore when Islam recognizes copyright as one of the property ownership rights, then the ownership will be protected as the protection of property.

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