

The Rights of Innovation during Man's life and Demise.

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Abstract

Innovation owns various rights, where the Muslim Jurists and the law jurists set forth in details and divided such various rights into several divisions under different names, which in the end revert to be three types and they are: Copyright, Patent right (industrial innovations), Trade name and Trademark. Copyright, is considered in Islamic Law as a financial right, cannot be substituted by compensation, and should not one infringe upon such right or to dispose without the approval and authorization granted by the owner. Invention is as authorship, both are mental creativity, and can be measured on the base of (absolute interests and benefit) as the interest here; is that to establish the protection of such right to encourage invention and creativity, so the one who exerts efforts in such issues shall only be the one who will invest and be accordingly benefited therefore. Meantime, the invention will be protected from the one who is trying to take over such and grab the advantages of the innovation, and compete in exploiting it. Also the patent and copyrights are awarded the same judgments, since both are mental creativity.

As for the trade name, title and the trademark, they are considered a intellectual properties which should be referred to the owners only, and should be deemed to have financial value in the contemporary customs and norms. These rights are significantly legal, should not be violated, the respective owners have the right to dispose of the trade or title name and can sell or cause assignment to the favor of other parties and so on. Thus, the rights of innovation (financial and moral rights) including copyrights are financial rights, liable to be inherited by the legitimate successors, unless otherwise be willed, therefore the heritage will go to the party as stated in the will, that is to show respect to the deceased owner desire, without specifying a certain period.

1.1 Introduction

Praise be to ALLAH, WHO blessed us by Islam that caused us to be from the nation of Muhammad, the Master of all people - peace be upon Him- and His family and companions, and who are guided by the guidance of Him to the day of Judgment:

Islamic jurisprudence comprehensively organizes the relationship of individuals with Almighty ALLAH the creator, at the same time with the society and the people among each other, seeking to secure the interests of the nation and fending off the harms that the nation may be exposed to in an easy way and by a very real humane means through legitimate obligations and resorting rights to where they belong. The Islamic jurisprudence reveals the reality and tolerance of Islam, easiness and leniency, also maintains decisive evidences that this religion is valid for all times and places, as life will not settle, soundly established and issues will not stand up right without this religion. Islam - as a comprehensive and integral system - came to lift the injustice, tyranny and to restitute rights to their owners, administrate justice in the Muslim communities, to have sincere affections and compassion among all members in the society, restoring good and safety all around the world. Moreover Islam is giving special attention to financial rights of Man during life and after being deceased. Therefore, this study is made to address the rights of innovation of Man during the life, and such right will move to the heirs after death.

1.2 The importance of this subject matter.

The question of innovation rights is one of the important subject matters in the Islamic jurisprudence (Feqh) as this owns importance in the lives and in the people's reality, the consequences that may emerge on the subject of rights of the people in their wealth, removal of damages, jeopardy that may affect the rights they have. So, jurisprudence in Islam addresses this point with care, therefore addressed this matter with care, and treated the issues to be fruitful and may yield benefits to the owners and the heirs thereafter, where also shows the importance of the subject in hand trying to give this study independency in terms of the point of views of the scholars of the different doctrinal schools combined to add momentum to this study. For that, I find that writing this subject will achieve advantages to every Muslim, and pay attention to the importance of knowing the Islamic rules and provisions herein this issue, by presenting in a simple way, so everyone will realize and understand the this issue, the rules and provisions related.

1.3 Justifications of selecting this subject matter:

There are several matter caused me select to write in this subject, they are:

1. Muslims need to know the legal rules pertaining innovation rightly; namely, there are new facts emerging, and to find out where are the prevailing view after extrapolation of such views of the legal scholars along with their evidences being exhibited in these various new emerging facts.
2. Show the ability of the Islamic rules and provisions comprehend various life aspects and the new arising issues.
3. Enrichment of the Islamic library by adding this research to exempt researchers from searching in references when there is a need to know these provisions and rules of innovation rights.
4. Exhibiting the sayings of the scholars in an orderly fashion, which combines the views of those scholars and at the same time, discusses the different opinions.

1.4 Ethics of this study

There are studies took-over to discuss an aspect of this subject as follows:

1. Right of Innovation in Islamic Law, Dr. Fathi Draini
2. Al Wajeez in Trade and Industrial Property, Dr. Salah Al Din Al Nahi, where he included therein the rights of patent, the trade name and the trademark.

This study is characterized by adopting contemporary references, compiling dispersed jurisprudential issues made by different of doctrine schools to be in one comprehensive and independent study.

1.5 The problem of the research:

As the subject matters of this research are dispersed in many jurisprudential reference and books; therefore, the researcher here considered to collect such subjects, put them forth in order and assembled to convert them into a deep study, figuring out, comparing and weighing out the issues contained in those references and books.

in such context, I shall address the matters that can be transferred to the heirs in terms of financial aspect associated with innovation. The study in our hand responds to the these questions as follows:

- What is the concept of the financial right, and what are the sections therein?
- What are the innovation rights, and what are the sections therein?
- What is the extent of bequeathing such innovation rights?

1.6 The Methodology of the Study:

The most important points that represents the methodology of the study:

1. I have adopted in authoring my research, the inductive and analytical methodology, where I intended to put in writing this study scholarly in details.
2. Collecting the scientific materials for the study in terms of the most likely places and, thereafter set forth in order the subjects included therein to clarify the plan related, analyze the information collected and compiled through a serious comparative way to attain the preponderant issues.
3. Derived the required provisions laid in those original sources approved to be set out in the different chapters of jurisprudence authored materials and references.
4. Attempting to refer to the largest number of sources and reference, so as I can confirm the information obtained, and if all reference and sources are absent, at least, I have examined most of them.
5. I have looked into, reviewed and examined what the literatures contain, reclaimed what is stated therein, and just I have quoted the issues related to this study to make use of the methods stated. Domesticating the methodology taking considering the scientific integrity to authenticate the information taken from the original sources.
6. Giving preponderance according to the strength and the integrity of responses, meantime, expressing my opinion as much as possible.
7. Attributing the Koranic verses by stating the name of Sura and the verse concerned.
8. Taking Prophetic Hadiths out from the prestigious Hadith books and judging the degree of authenticity, as well as the effects contained therein as much as possible.
9. Mentioning in the research the biographies of some great scholars, who are not well-known to the public, this is made to avoid having the research prolonged.

Eventually, I have exerted best efforts to clarify the judgment of Islamic law in the matter of the innovation rights, and I am not pretending to be perfect, and not serving this study with grace- only ALLAH is the perfect-thanks only to be to ALLAH Almighty, that if I have approached the right way, all thanks shall be to ALLAH and by the virtue of HIM only, and at the same time, if I have failed to fulfill the subject matters of the research, it is enough for me that I have spared no efforts and made every effort to achieve success. So, I ask forgiveness from Almighty and pray not to be deprived the reward thereof, and each Man shall have only what the intention he makes. I ask Almighty that to cause this work purely for HIM, and praise be to ALLAH.

1.7 First object of research

Concept of Innovation Right

The theme object included three requirements.

- First requirement : definition of right in lingual term
- Second requirement : definition of right idiomatically.
- Third requirement : definition of innovation
- Fourth requirement: sections of rights in financial consideration
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First requirement: Definition of right in lingual term

Right in terms of language: (letter i and t of the same origin indicating the perfection and verity), it is said; I effectuate to prove something, this means, actually I have proven something, or judged that this is actually true, it is also said; I disputed with somebody, means I initiated an argument in a right issue, and it is said; I initiated a dispute, that means I contended with him for something trivial.

According to the dictionary of “Al Muheet” that the right is designated for: justice, money, property, existing, firm, duty, and certainty; and

The right in the language: is unlike fabrication, which is the verbal noun of right, confirmed and being firm as an obligatory. Right is a name from the names of the Almighty ALLAH, should be one of ALLAH’s names: [Such is ALLAH, is your Lord], the plural is ‘rights’. The right is used under the following meanings:

- One of ALLAH’s names, which this name gives the meaning of, firmness and confirmation, obligatory, justice, certainty and certitude, the lord, the wealth, and the existing.
- The linguistic meaning suggests more than one indication; however, the general meaning of ‘right’ revolves around the meaning of firmness as an obligatory. I have elaborated the linguistic meaning, since the scholars noticed such meaning when they mentioned this term. Yet, some of scholars have not mention a definition for the legal term ‘right’, this is on the linguistic meaning, due to the clarity and being common, we will notice here that through the following requirement related to the clarification of the meaning in idiomatical wise.

The Second Requirement: The Right in Terminological meaning

First: The Definition of Right with Legists:

The legists took care to clarify the meaning of right, and the sections thereof, they have divided right into two types:

- The right of ALLAH and the right of the subjugated.
- They mention that right owns several definitions:

First definition: The Right: the existing in all aspects and every way, there is no doubt in his presence.

The right of ALLAH Almighty: which is referred to the Public utilities to the world, no one is involved in HIS rights, only this is attributed Almighty ALLAH and to glorify HIM....

The rights of the servant of ALLAH: which involves the particular interest and benefit related to the servant; such as immunity of the servant’s property since this is a right for him in the matter of maintaining his property. Thus, property is permissible either by making his property permitted, not adultery due to such action.

Second definition: The Right of ALLAH; is the order of ALLAH TO do and do not do (ALLAH’s commands to

do and prohibitions the act of doing), while the right of the servant is his benefits and interests. Therefore, we can realize that some legists believed that the right is in the meaning of the interest and benefits, so, the rights of the servant are his interest and benefits. Meantime, the right of ALLAH, where the Public utilities is related to.

Accordingly, the legists definition is not so different from the linguistic meaning, yet it may be inferred therefore, as it is understood. As they stated the purpose behind legalizing the right, it is the benefit and interest, the servant's right is adhered to his special interest, but the right of Almighty ALLAH is fixed and necessary for the public interests, while the special interest is represented in servants' rights. The definition of those legists is only revolving around the public utility, which is represented in the Almighty rights and subject to such rights, and the special right which is represented in the rights of the servants.

Second Definition with Scholars:

The scholars of the past ages, presented several definitions for the term 'right', we found that – in addition to what the legists cited – some definitions in this connection, most of such definitions are going around the linguistic meaning. I shall state herein some of such right, then I shall state the definitions of the contemporary scholars, then I step forward to the definition that, I believe is preponderant, ALLAH KNOWS the best,

First Definition: (the right the man deserves)

Second Definition: what is being set out by Aladdin Al Bukhari in his explanations "Secret Revelation", in the Matters of Principles of Fakhar Al Islam Al Bazoud, that right (is the existing thing in all aspects and no doubt of this), this appears to be a definition in linguistic sense.

Third definition: Al Qadhi Husein Al Marouzi defined right that: (it is the competency of appearance which is intended to be legitimate.

- Right definition with contemporary scholars:

The contemporary scholars define right with many definitions; I shall state some as following:

Right: Is a firm interest and benefit for the individual or to the society or for both, wise legislator determines this matter.

Right: Is an interest and benefit matures legitimately

Right: Every interest and benefit considered by the wise legislator.

Right: Is the matter that has been approved by the legislator and being protected accordingly.

Right: Is a scope of specialization that approved by jurisdiction, performed or by commissioning

Right: Is a specialization being approved by the jurisdiction of Islamic Law on something, or by the requirement thereof in achieving certain benefit

First party: They identified the right by interest and benefit.

Second party: they identified the right by the linguistic meaning, firmness and requirement.

Third party: they identified the right by specialization.

Responding to the issue of the first group as follows:

The right itself is not an interest and a benefit, but an instrument conduces to the interest and benefit. In the other hand, the interest is a purpose that can be attained when using the right, which they identified the right by the purpose thereof.

That the meaning of firmness in the two identifications is the upper hand, where nobody will be able to turn back from what has been confirmed to his favor, or prevents the process of exercising the right, though the action herein is permitted or delegated thereto. So, the two identification are on the righteous side, due to non-distinction between the right and other issues. As for the third conception, those who have identified the right in terms of competency, therefore, the two definitions are close and have one concept as they include all types of right the scholars expressed; this is the definition which I can say it is preponderant.

The preponderant definition:

After this exhibition to the identification of right made by the scholars of the past ages and the contemporary scholars, I find that the definition of Dr. Al Deraini and Sheikh Mustafa Al Zarka are close, and I therefore state as follows:

Sheikh Mustafa Al Zarka identifies the right as: it is the competency being decided by the authority of Islamic Law or by commissioning.

While Dr. Al Deraini identifies the right as: it is the competency being decided by the authority of Islamic Law, or by a necessity caused by others to perform a certain benefit.

Third Requirement: Definition of Innovation (Moral Rights)

The Islamic Jurisdiction did not experience in the past such right which is named Definition Rights or Moral Rights, but the Islamic Jurisdiction able to accommodate these rights, for such instance, I state hereunder the definitions of some contemporary scholars definitions in this matter, or definitions of Moral Rights.

Dr. Mohammad Shabeir said: it is the authority of a person executed on something immaterial, whether being an intellectual production as copyrights in scientific and literary compilations, in patents related to industrial inventions, or as a yield of trade activities to attract customers as well as the trade name and trademark.

Dr. Qala'ji defined it: rights refer to something abnormal, as the right of the thinker in his intellectual production, such as the copyright in the researches authored, the right of the inventor in the machine which is invented by him, the right of the trader in the trade mark which is set out for his trade activity, or in the trademark he invented for the purpose of commercial activities.

Dr. Al Boutti says: the term (Moral Rights) is attended in the jurisdiction terminology corresponding financial rights, whether being related to immovable objects or incidental benefits... any right related to the right in-rem and no incidental benefit, shall be considered a "Moral Right" ... such as remuneration, proceedings and divorce rights... due to all of this, we can decide that moral rights have no connection with innovation right...

Dr. Abbadi defines: That it is the authority for a person in immaterial rights, as a yield of a thought or an activity, such as copyright in scientific compilations, artistic innovations, inventions related to the inventors, the rights of the trades in the trade name, trademarks and customers confidence. So the moral rights are a broad term, can hold all rights which are moral, whether intellectual, scientific, literary or industrial and other rights. Many names have been designated for moral rights. Out of which; mental or intellectual rights, since it is a product of the intellect, in addition to, mental or intellectual rights, copyright and industrial rights.

Prof. Mustafa Al Zarka has favored the title 'innovation rights' – he said: "we have considered likely to give a title this type "innovation rights" since the title "literary rights" is not a broad one, and does not go in line with many of the many of the types of rights, such as in the field of the distinctive trademarks, innovated industrial departments, and titles of stores, which have no relation with literature and intellectual productions; while the title "innovation right" able to contain the literary rights, as copyright in the matter of exploiting the book authored by him, the journalist in exploiting the license of newspaper, the artist in the effect of fine arts he / she made.

Also includes industrial and commercial rights, which they these days call industrial property, as the right of inventor of a machine, and innovator of a distinctive mark that won confidence, and the innovator of a trade name which achieved fame... etc"

Dr. Deraini defined innovation by saying: **"the intellectual image that came up due to entrenched talent within the scientist or a writer, and alike, that being excelled by himself and no one preceded him in such novel innovation"**.

The more so, should name this by innovation right, due to the extensiveness of the engagement that includes the presented manner raised, and includes rules that prevent the involvement of non-financial rights: Such as retribution, divorce, mortgaging and other right, they are moral right and cannot be under this designation.

Based on the definitions of forerunner scientists who made innovations, it is therefore possible to define innovation rights: that it is the competency of the scientist or the thinker in what invented and no one preceded him / her in such innovation, this is by benefiting, takes yields therefore and prevents others in the disposition matter without his / her permission.

Fourth Requirement: Sections of rights in financial consideration

The rights are classified into two principle sections in financial consideration: Financial rights and non-financial right.

Financial rights: This section is related to financial matters, and the related benefits and interests, which means that funds or benefit are the point of focus, such as the seller in the price, and purchaser in the commodity, and ownership of objects or liabilities.

Non-financial rights: It is called the privileged personal rights. This is the things proven and described to be designated to human beings as the right of the mother in nursing her child, the right of self custody, the employers rights, where this is being assigned to them due to the features they own which cannot be assigned to others.

Subsequently, the financial right ramifies into two type and they are:

1- **Personal right:** it is a requirement approved by Islamic Law for a person to be borne through another person, as the right between to dealers, one them owes the other a price to be fulfilled, and the other should deliver the sold object, also the right of the wife or a relative in disbursement issue, may also be the action of abstaining of doing as the right of the depositor upon the deposited thing that not use the deposit.

2- **Right in-rem:** It is the right approved by Islamic Law to a person upon a certain thing in particular; the relationship is present between the owner of the right and a certain material thing in particular. Therefore the

entitled shall have the direct authority upon this particular thing.

Just like the ownership, it is a direct legal right for the owner upon the owned thing, and this authority legal meaning shall never be hinged on practicing, the presence of someone other than the owner or his mediation.

Just like the ownership, it is a direct legal right for the owner upon the owned thing, and this authority legal meaning shall never be hinged on practicing, the presence of someone other than the owner or his mediation.

But the meaning therein is merely the presence of the owner and the owned, where the owner can practice its authority upon the owned object and enjoy its legitimate yield, such as using, exploiting or consuming without being subjected to anyone.

2.2 The Second Theme: Innovation Rights (Moral Rights)

Innovation Rights (Moral Rights)

First requirement: Types of innovation rights (Moral Rights)

In the present time which is characterized by progress in all aspects of science, transactions and significantly in rights, many types of rights were not appearing to exist, such as the rights of innovation, trade and industrial rights, copyrights and so on. Since Islamic Law is valid for all times and places, therefore, the student of science and searching should vigorously and earnestly be interested in this Law and exert efforts to get to legitimate provisions for such developments. So, I will consider this subject with my care and do the discussion required guided by the great scholars saying and view who already looked into the essence and consolidated the legitimacy of this science.

2.2 First requirement: Type of the Moral Rights

Moral rights own many kinds, the scholars of Islamic Laws and the Scholars of Law have mentioned and detailed the questions therein and divided those questions into several sections, gave various names referring ultimately to three types that I will discuss them here, they are:

- 1) Copy rights.
- 2) Patent rights (Industrial innovations).
- 3) Trade name and trademark rights.

First: “Copy rights”

Section one: Legislative history of copyright protection:

The need does not appear necessary to create the process of protecting the literary and properties innovated by authors, only after the invention of the printing press, where thousands of copies could be printed for one compilation, which caused the author seek significant material revenue. In spite of this, the law left the authors without protection for long time, therefore, the yields of such intellectuals subject to be looted by people. France was the first county to start the process of protecting the copyrights that was in 1791, Britain followed in 1810 AD, and America in the year 1831 AD. The international movement was intensified in this affair calling for the protection of the copyright, which ended up establishing the artistic and literary association at Paris in 1878. This association had been able to conclude what is called Berne Convention in 1886 intended for the protection of copyrights, and followed with several conferences addressing the subject of copyright protective measure, then the League of Arab States set forth in 1948 proposed a project for the protection of copyright. The League Council recommended that the governments of the Arab States should adopt measures; where Article 23 of the project concludes that the right of the heirs shall be exhausted by the lapse of thirty years after the demise of the author. Then UNESCO made an international agreement in 1952, where a principle had been put forth that the period should not be less than the length of the author by twenty five years after his demise. So many countries issued laws and regulations aiming to protect the copyrights.

Second section: Definition of the copyright:

Authoring is defined by invention of something non-existent, collection of sporadic, supplement of incomplete, detailing summed up, refining a prolonged, ordering a confused, identification a vague, rectification of a mistake or an error.

Therefore, authoring includes a creative action, whatever the degree, such as to create something new no one preceded to, or a development of a scientific work, by elucidating this work, correcting the mistakes folded therein, completing the shortage there, deleting repetition to ease such matter for learners to study and memorize accordingly.

The copyright is represented into two things:

First: Moral right, which is the right in a portion of the copy or the research, shall be dedicated for the author forever.

Second: Material right, the author's right in the financial revenue which the book yields while the author is a life; thereafter, the heirs shall inherit such right in the event of demise.

Definition of the patent (industrial innovations):

"Patents (industrial innovations); is a documents conferred by an official authority, or by the office working in the name of a group of countries, upon the request thereto. Such official certificate is a right being conferred to the inventor indicated hereto in using a certain invention in his / her own business or assigned the patent by selling to another party or exports the same".

As for the terms that should be required for granting a patent for protecting the invention:

- 1) The invention should be innovative, such as invention of a new drug that may cure one of the diseases, or make a heating device valid also for cooling.
- 2) The invention should be brand new, i.e., the inventor should precede others in the subject matter of this new invention.
- 3) The invention should not breach the moral or public orders; such as the inventions related to gambling machines, or the one who invents drugs intended for abortion.
- 4) The new invention is exploitable in industry that should be intended for industrial exploitation, which means any industry that serves economic exploitation. In this sense, the industrial inventions involves of agriculture and trade scopes and others.

Rights that ensuing from patent:

This patent grants the inventor several rights out of which:

- 1- The right of the inventor to refer to his capacity in the patent which is being issued to the third party... in other words, the name of the inventor should be mentioned in the patent issued to the favor of the employer.
- 2- The right of the inventor in exploiting the invention, and his / her heirs has the same right after his / her death, with a period determined by the laws of patents where such right shall lapse.

Types of Patents:

Patents are divided into various divisions in terms of the contents and extents.

- 1- Complete patent rights
- 2- Models and utility certificates, they are types of minor patents, given upon easy terms, thus, such rights will be specific and less than the rights given to a full patent.
- 3- Patent by annexation, or annexed certificate, this is usually granted to improve the invention which has already been granted.
- 4- Import patent, this patent is granted to a person or an entity that uses for the first time a discovery made in a foreign country, should here observe that such patent does not give protection to such invention, but may recompense an industry initiative.

Third: Rights of Trade name and trademark:

Definition of trade name and trademark: That one distinguish the owned institution be known and identified by such mark, this could be a name, and whereupon shall be called (trade name), also, could be a design, whereupon shall be called (trademark).

Some of others define trade name as a label, the merchant uses as a distinctive sign for his / her commercial project to be known to other traders, that the traders will know that this commodity belongs to that trader who is using this distinctive label and for the purpose of good dealing and service.

The Right of the Trade Name:

It a right for every trader – or any establishment, or industrial company, agricultural and / or commercial – to

adopt a name that shall be known with, this is to prevent the imitation of owner's products, or to be known and recognized by the clients to heed exclusively. The international regulation today grant protection to such names that the dealers adopt for their institutions and companies and consider the trade names among items that can be sold and purchased, such as any commodity that can be sold or purchased, and often noticed that a company may pay to another one millions just to allow making use of the trade name such as Pepsi-Cola and Kentucky, and so on.

The Second Requirement: The Position of Islamic Law in the Matter of Invention Rights

The subject matter of invention rights is from the new subject matters –as we said- and the scholars of the ages lapsed have no point of views, therefore, I shall discuss and figure out this matter taking into consideration to have guidance of the senior contemporary scholars who have already investigated the nature and the essence of these rights and made foundations legally, establishing provisions and regulation for such right legitimately.

First Section: the copyright in Islamic Law:

The copyright was known by the precedent scholars, in this connection, Prof. Wahbi Sulaim Ghaji said: "I have no knowledge if any certain provisions have been provided in this matter, or any certain jurisprudences independently have been made by righteous Salaf. To delve into this subject and get out with outcome is not any easy task, and it is not easy for people to accept any view based on a special diligence. Therefore, the contemporary scholars have different views being divided into two sections:

The first view: some of the contemporary scholars say that copyright should not be considered as a financial right, hence, the financial right it is not licit, as the view of Dr. Ahmad Hajji Al Kurdi. Those scholars indicated the following:

1. Considering this right suppression to science, meanwhile suppression of science is impermissible, this is what Ahmad Hajji Al Kurdi says: "whoever imprison science and hide such science from the ones who need, ALLAH at the doomsday shall bridleth him with a rein of fire, this Hadith narrated by Abu Huraira – May ALLAH be pleased with him – he said: The Messenger of ALLAH said: (whoever mutes science that he knows shall be bridled with a rein of fire).

Ajlouni commented by saying that; the Prophetic saying that: "this intimidation includes the books imprisonment and do not give the requesters to be benefited from such books".

2. Science itself is devotion, it is not an industry or business established on financial matters, so one used to study and he is studying for the sake of Almighty ALLAH.

3. Copyright is an absolute right, and the absolute right is not replaceable by money, as Ahmad Al Hajji says: "this copyright – most to say here – that it is an absolute right as the School of Hanafis view, this is what I give preponderance, shall not be sold and not to be waive in exchange of money, it is light right of preemption".

4. Holding this right shall cause non-dissemination of science. In the event that this right is vanished, therefore the prices of the books and print Medias will be less.

The Second view: Many of the contemporary scholars that the author has right in the copyright, and regarded compilation is money, so the allowed to get financial revenue, they quoted as evidence by the following points:

1. The advantages are considered Money by the majority of the scholars, from the Malkiah, Al Shafiah and Hanabilah are moral matters, and no doubt that the mental production represents an advantage of man benefit and considered money that should not objected religiously.

2. The Arab and Islamic customs estimated these rights in a very due value, and approved to be allowed, moreover gave the right to be financially compensated, though these rights are with an empty pouch unfit to be exchanged and also unfit for permissible gains due the absence of financial status and ownership, therefore the permission shall be regarded hereupon and remedy instead are to be vainly posed.

After accepting such permission of such awards shall be regarded ill-gotten. To the effect of this custom that financial bases of the things, just because "finality name only pertains something has value", which means, that there is a norm among people. So, this becomes as an object for compensation that could be sold, it is proven by fixed by a legit custom.

3. Placing copyright on the base of an absolute interest, whereas Dr. Dureini says: "the legitimate judgment (legalizing of the use of financial returns) estimated in the interests and benefits of innovative intellectual production, is originating from norms, based on the absolute benefit has connection with private rights that contingent on the public rights related.

In fact, the intellectual production is based on the terms of forensic therein is of two types of absolute interest,

but from two aspect:

In one hand: that such intellectual production is a property oriented to money, since the interest is private, returns firstly to the author and the publisher and to the distributor and successors, since this being right orienting money in the first place.

Accordingly, the absolute interest and benefit here is relating to a special right as observed, as well as the moral interest of the author connected with the author's scientific personality.

In the other hand: it is a confirmed a public interest included therein, relating to the entire humanitarian community, which includes also the intellectual values owning strong impact on various aspects of life, and as one of Almighty's rights as we provided; due the inclusion of utility and grate jeopardy.

The absolute interest is of two types, one in terms of religion, cherished by adopting rules provisions, since it is one of the justice and right pillars relying on norms.

4. On the basis of (Pay for Losses) and (duties by security); Prof Abdul Hamid Al Tehmaz says that: the right is confirmed for the author, conforming the Prophetic Hadith, narrated in Al Sunan through the Hadith narrated by Aisha that Prophet Mohammad- peace be upon him- said: (duties by security).

This Hadith means that; anyone who secures something to get benefits therefore. This Hadith acts and states a modern general jurisprudential base includes many ramifications in doctrinal issues.

Scholars decided that the interest is in return of ownership, or ownership and security, and stated a general jurisprudential base and they set forth the jurisprudential base: (Pay for Losses), which means; that if the grace is in exchange with harm, so, harm shall tolerates the grace, and therefore shall be similar to this the jurisprudential base: (Grace is as much as indignation, and indignation as much as grace). So, the author shall be bear the direct responsibility of what researches presented by him, and shall bear consequence thereof, where he / she causes good, shall earn good, but contrary shall earn evil.

5. The author owns the copyright hereof, as well as the manufacturer shall get the ownership of the manufactured.

The scholar Abu Al Hassan Al Nadwi says: (the author shall be considered as the manufacturer, due to exerting time, diligence and money, and the authored materials shall be regarded as a manufactured item level, in addition that every manufacturer shall have ownership in what he makes in Islamic Law, so the author shall have the ownership in the copyright he makes.

What is predominant that ones who say the second view; that the copyright is regarded religiously and there is a financial right therein and remedy is also allowed, no one will be permitted to abuse such right or dispose without the permission of the owner, since the right here occupies an important part in the lives of the people, as considered from the strongest interests and has effectiveness in the lives of people, whereby such right is more common, entailing that not to say this right does not considered to be protected, and with no remedy entailment, this may cause drop-authorship, writing and authoring, since this will financially cost the world, as well as mental burdens shall come out as a result.

As for the first saying; that the right of copyrights is considered a concealment of science, no one said that the prohibition of monopoly entails to offer legally the monopolized material free with no cost or compensation.

Thus, concealment of science is the prohibition reason, and not the remedy for the exerted effort to bring the science to light.

As for what has been said that dissemination of science is considered worshipping and obedience and not a matter of trade and industry, thus, worshipping does not entail remuneration or a wage, this is undisputed, as the recent scholars just allowed to get a remuneration or a wage for performing worship actions, such as; to be Imam, calling for prayer and teaching Holy Koran.

As for comparing the copyright with the right preemption along with the difference in between, the legislator proved this should be made to stave off damage from the intercessor, thus, the remedy is not allowed, but the copyright shall be regarded for nothing, such as staving off damage from the author, but should be in exchange of intellectual efforts made in the preparation of the authored material, so remedy should due in this matter.

Second section: Patent in Islamic Law:

Patent on invention is as copyright, both are intellectual innovation. There is a space in Islam for this type of right, and could be rested on the basis of (absolute interest), where we have indicated in the copyright matter, the concern here is in the protection of such right to encourage and enhance inventions and innovations, and to let know the one who exerts efforts in these issues shall be the owner and specialized in the investment thereof, in the same time be protected from infringements that other party may try to harvest the fruit of the innovation and thinking and compete in the exploitation of such innovation.

Therefore the ruling provisions of patent and copyright are one, since they are mental creativity.

Third Section: Trade Name and Trademark in Islamic Law:

There is a space in Islam for this right, and could be based the basis of (absolute interests), as indicated in the copyright issue. The contemporary scholars agreed upon to regard the trade name is a financial right, and contains financial value in addition to a certain commercial significance where to achieve promotion of something carries that name.

It is owned by the owner, and ownership indicate specialization, despotism, or be able to use and dispose such ownership, sell, lease or otherwise, to prevent others from infringe thereupon unless permitted by the owner.

In the light of this, the trade name, though it is seemingly a moral thing, but in fact has a tangible reality, an intrinsic value, independent from other goods presented therein. It is an advantage that the trader and the dealers benefit from such name. So, the trade name has a financial value since it is a beneficial right, where anything put to use will be considered capital, or money.

In its fifth session, the Islamic Fiqh Academy held at Kuwait 1-6 Jumadi the first corresponding to 15-10- 1988 AD decided as follows:

First: The trade name, trademark, copyright, innovation and invention are rights of the owners; they own financial consideration in the contemporary custom that since people are funded therefrom. These rights are legally considered, so should not be violated

Second: it is allowed to dispose the trade name, trade title or the trademark and assigned in return of a financial remuneration, that is only no deception and fraud are negated, regarding that this assignment turns to be a financial right.

Third: Copyright, innovation and invention are legally protected, the owners have right to dispose and should not be infringed.

This proves that the trade name owns a safeguarded right, a realized benefit, and money yields that could be disposed or sold and so on.

3.1 Third Requirement: Heredity of Innovation Right

The acknowledgement of the Legislator of the financial right as a an international remedy and customary as an absolute interest relating to the right of the public – at the same time – as an acknowledgment that the innovation is relating to the owner himself.

This relationship is a jurisdictional, and we mean by the right only this. It is as a relationship actually existing, since being issued and produced by the innovator, attributed to him and the innovator is the one responsible for such innovation, where cannot be denied or ignored. In the event the relationship is jurisdictional and direct, and could be money, then it is actually an in-kind financially limited only to its owner, no one permitted to encroach on the innovation, have authority to dispose unless a permission is obtain from the innovator, since there is no since to the acknowledgment without imposing protection on the innovations as other rights, form this point, should initiate supportive protection from filing a claim and requesting remedy when necessary, and as innovation is a financial right, therefore it will be legally transferred to the successors.

Pursuant to the decision taken by Islamic Fiqh Academy held at Kuwait on 1409 AH – 1988 AD, that the trade name, trade title, inventions or innovations are rights related only to their owners, and have in the international custom a considerable value; upon this, it a right belongs to the owners and from the most prominent characteristics thereof the financial right and to be inherited accordingly, so such right of patrimony is applicable herein, and should be transferred to the successors taking into account its financial effect and being financed among people.

Imam Al Qarafi believes that diligences are mental production or scientific thinking though they are a right for the author, but they are non-financial right, shall have no connection with financial matter, therefore cannot be inherited, supporting his claim the successor cannot inherit the (source), it is the brain, the branch does not inherit, or what is related to the source, it is diligence or the scientific innovation production. The Branch shall not inherit or what is belonging to the source, it is diligences and the innovated scientific production.

Furthermore, (diligences) in terms of religious works or belonging to religion. Religion cannot be bequeathed and what is belonging to religion. Al Qarafi said; “note that it narrated from the Prophet – peace be upon him – that: (who ever dies, the rights shall be for his successor), this word is not general, but there are rights transferrable to the heir, and some rights do not move to the heir such as the rights linked to the psyche of the deceased, the deceased intellect could not be transferred, but is the control for the transferrable thing which is related to financial matter, the financial items can only be inherited, the successors can only inherit the things referring to money, and not the deceased intellect, and the things cannot bequeathed shall not be inherited including posts, mandate, diligent, religious deeds owned.

And nothing will be transferred to heirs, since the heir does not inherit the bases of origin.

Dr. Deraini replied him in the following points:

Scientific production is of two qualities, not allowed to take a part of these two qualities, one of them: it is an effect of the scientific personality, wherefrom the author shall have a right in the material authored as well as his responsibility therein.

1. It has been proven that for scientific production own financial value in terms of international norm, that after being separated from the author, and be in a form of a book or alike. From the characteristics of the property, accepts compensation also can be inherited.

2. The Sunna confirms disintegration of the scientific effect from the owner in the view of the legislator, such integration will not be void after the owner's decease, but continues to yield benefits as the Prophet – peace be upon him – says: (in the event that the son of Adam dies, his work shall come to an end, except three: ongoing charity, beneficial knowledge, or a righteous child who prays for him).

3. Neglecting to look into the financial attribute in relation with the intellectual innovation is an excuse conduces to eliminate the rights of the authors and scientists, and thereby shall cause them drop to continue further researches and innovation, thus will deprive the nation as well as the human communities from a genuine and certain public utility.

4. Definitely, such major and real utility is considered from rights of ALLAH, and as we know that the right of ALLAH, is relating to two judgments:

First one: should not be dropped or be lenient therein, but should be fulfilled.

Second one: Should be protected, and be defended from any infringement or encroached.

5. The rules have been legislated to give projection to interests and achievement in this place. The interest that ensues from an intellectual innovation is from the strongest interests, owns most powerful impact, and most prevailing, in case it will not be achieved, only through recognition of the financial right of the author in the matter produced that to prevent being refrained therefrom.

6. The religious attribute of the human action here is not the cause in deprivation of the financial right thereby. The scholars recently issued a Fatwa, that wage in exchange of worship action is permissible, fearing such refrainment due to the need of earning living.

7. The strife (Jihad) is a performance action of worshipping purely for the sake of ALLAH, where ALLAH grants for those a right being four-fifth of the booties made, that to let those combatants continue is such action for the sake of ALLAH.

8. We do not argue in the matter that the heirs do not inherit the intellect, however, we would say that they inherit what is produced by the author due to intellectual efforts in an in-kind object, being a book or so, and this cannot be torn down, and shall not be interrupted due to death, but shall the wage and benefit go on.

9. We do not make the benefit sequent to an in-kind in terms of financial and in inheritance matters. But should the benefit be singlehanded into the judgment, and should the in-kind be considered an instrument of fulfillment.

10. Jurisdiction, positions and jobs are mere rights, very close to human characters, should not theorized the innovation rights over here, whereby the innovation rights are settled within financial matters by norms, spontaneously inherited, and should cause remedy through warranties.

After stating such evidences and responding to Al Imam Al Qarafi, where the rights of already evidenced and confirmed; therefore, it is predominated that inheritance shall move from the deceased to the heirs.

Some authorizes already determined the term of the exploitation of the innovated scientific right inherited. UNSCO defined the period in the convention signed many countries in 1952 stating therein the following: (it may not have the protection period more than the life of author, and should be for 25 years after the decease of the right owner); so, it is being for 25 year of protection after the decease of the scientific production.

Arab League made such period to be 30 years as stated in the agreement of 1948 after the decease of the author by providing in Article 23 of this project that; shall the right of the heirs elapse by 30 years after the decease of the author.

Dr. Al Deraini suggested that the period should be 60 years after the decease of author by saying: (however, we believe that the exploitation period should be 60 years maximum from the date of the author's decease, taking consideration of the maximum period in relation of making use that the Islamic law in the issue of monopolization, being the right of decision in the land consecrated to cultivation or construction, through long term lease, since the origin is the consideration and since the scientific production is a relevant innovation, reliance on the heritage of Al Salaf, as a general right of the nation, and considered subjugated on performance of good deeds in general. Dr. Mohammad Rawas Qala'ji such period to be 100 years where he says: (the heirs of the author shall inherit such right after the author's demise, continues for them for 50 year from the date of demise of the author, thereafter shall expire. Estimation of the period to be 50 years is not based on a legitimate

evidence, but a pure organizational matter, like non-hearing of a right legal case after 10 year passes, such right being under the possess of third party unclaimed by the real owner.

I believe that the period should be estimated by 100 years, since the passage of 50 years, the author dies and within the 100 years also the grandchildren also die, it something common that the grandchild will be aware of the grandfather and attached to him passionately, bears and repeats his thoughts, cherishes him through maintaining his books. The grandchildren thereafter will die, having the good memorization about the grandfather fade away and the sons will remember anything about the grandfather of their father.

Prof. Wahbi Ghawiji says: (the right reprinting a book, shall be referred to the heirs of the author, and since the matter of fact that man when demises, shall divide the heritage among the heirs, and therefore, I believe – Almighty know - that to continue the right of reprinting the book to the heirs, since it is the author's right and a right when the author deceases will be moved to his / her heirs and not the heirs after).

I believe to define a specified period has no clear legitimate base, thus the rights of innovations remain the moral and financial rights- including the copyright are financial rights, the heirs will inherit as they are more entitled to get such rights, unless otherwise, there is will to third party to get and own such rights, respecting the demised author well and point of view.

3.2 Conclusion

Praise is to ALLAH, WHO blessed us by Islam that made us from the nation of Muhammad, the Master of all people. Peace is upon Him, His family and Companions.

Through my study in the matter of (innovation rights, the following findings could be drawn out:

1. The right in the language is followed by significations, the most important ones are: constancy, necessity, while in terminology, there are several definitions being mentioned, all are contained in one meaning close to the linguistic meaning. It is a specialization whereby Islamic Law decides the authority on something, or requires to performance be done by another one for a certain benefit.
2. The innovation rights are known as : The specialization of a scientist or a thinker in the matter of being invented and no one preceded him to such innovation, that will be beneficial to that scientist, the yields therefore and prevent other from exploiting such innovation without permission.
3. I stated that rights are divided in financially consideration to two main sections: Financial rights, and non-financial rights. As for the financial right and benefits and interests related, while as for non-financial rights; they are the pure personal rights: they are the rights being proven and affirmed to the man in terms of meanings and description distinguish man than others, such as the mother in nursing and nurturing her child.
4. Moreover, I have discussed the financial right where this right ramifies to two type and they are: personal right; which is the requirement acknowledged by Islamic Law for a person to another, such as conclusion of a deal or a pledge of allegiance between two persons, the in-kind right acknowledged by Islamic Law for a person on a particular thing such as a property as a right for such person.
5. Rights of innovation in many kinds, the Scholars and jurists detailed this matter and divided it into several divisions, naming it with different name all in the end referring to three types where I have discussed and defined accordingly and they are: copyright, patent right (industrial innovation), trade name and trademark rights.
6. Copy right is legitimately considered and it is a right of money could be remunerated and compensated and no one has the authority to infringe thereupon or dispose thereby unless otherwise obtains an authorization from the owner.
7. Invention and copyright are alike, they are an intellectual innovation, and could be considered on the basis of (absolute interests and benefits), and the interest here is the protection which should be maintained that to encourage inventions and innovation, in order to cause the owner know that who exerts the efforts in inventions will be the one who is authorized to invest such inventions and innovations, and shall be protected from any infringement, encroachment and / or compete in the matter of exploitation.
8. Patent and copyright, both own the same provisions and regulation, since they are intellectual innovation or mental creativity.
9. Trade Name, title and trademark, all are rights private rights dedicated for the owns thereto, such rights in the contemporary norms have a considerable financial value, and being also legitimately considered in terms of rights, should not be violated and the owners are only the entities authorized to dispose in respect of the trade title, name or trademark, and transfer the same for sale by assignment.
10. Innovation rights (the financial moral rights), including copyright which are financial rights, the heirs inherit, unless otherwise being willed to others, therefore shall be inherited to the party mentioned in the devise, respecting the will of the owner without specifying a certain period.

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