

## ***ROYALTY FOR THE LICENSE OF INTELLECTUAL PROPERTY RIGHTS ACCORDING TO ISLAMIC LAW***

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### **Abstract**

The purpose of this study is to describe Royalty fees for intellectual property rights in Indonesia, according to Islamic law. The method used in writing this study is the library literature method. Data analysis using four stages, starting from data collection, data classification, data filtering, and drawing conclusions. Based on the results of the analysis, it can be concluded, first, royalties are compensation for the utilization of the Economic Rights of a Work or Related Rights Products received by the creator or the owner of the related rights. Royalty fee is a fee that must be paid periodically for the use of concepts, systems, inventions, processes, methods, logos, brands or names based on a franchise agreement, whether or not accompanied by a minimum or maximum amount of certain royalties. Second, in the rules of Shari'ah, matters relating to the distribution of business profits must be determined first at the beginning of the contract (contract). Royalty fee known in the contract or book printing cooperation agreement is an equation of profit sharing (profit) in muamalah fiqh, the size of which can not be set at the beginning except the profit ratio

**Keywords:** *royalty, fee, intellectual property rights, law*

### **A. INTRODUCTION**

Market forces and advances in digital technology are able to facilitate the distribution of copyright more efficiently. The owner of the copyright, user and online platform are the three main aspects of the copyright system. Stake holders and relations form the main structure of the digital economy sharing copyright. Subsequent developments, changing technology and market forces quickly blurred the lines of these three aspects. "Under the shadow of the law, a sustainable model of copyright distribution must carefully align business interests and individual users."<sup>1</sup>

According to Varian in conducting research, he argues, "There are some concerns about the economic feasibility of the current model for scientific publications, or in this case traditional forms of publishing about the threat of copying and copyright and technological challenges."<sup>2</sup>

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<sup>1</sup> Jyh An Lee, 'Tripartite Perspective on the Copyright-Sharing Economy in China', *Computer Law and Security Review*, 2019, 1-19 <<https://doi.org/10.1016/j.clsr.2019.05.001>>.

<sup>2</sup> Hal R Varian, 'Copying and Copyright', *Journal of Economic Perspectives*, 19.2 (2005), 121-38 <<https://doi.org/10.1257/0895330054048768>>.

World Trade Organization (WTO) classify industrial property rights into 7 appropriate categories article 1.2 Trade Related Aspects of Intellectual Property Rights (TRIPs), are Trademarks, Geographical Indications, Industrial Design, Patent, Layout Design of Integrated circuits, Undisclosed Information, Trade Secrets and Test data dan New Plant Varieties.<sup>3</sup>

IPRs bring rapid progress in the world of investment. The global market is a target calculated by investors. Regulators and investors play an important role in economic development. Watt states put forward as the justice principle underlying societal constitutionalism, sustainability could potentially also provide the new axis of global collisions of law.<sup>4</sup> “IPR can encourage more outlays of foreign direct investment (FDI), development (R & D) and improve the quality of exports of high-tech products. FDI plays a mediating role in the relationship between IPR protection and the quality of exports in developing countries, while the effects of mediation in developed countries depend on R & D and FDI.”<sup>5</sup>

Protection of IPRs stimulates domestic competitiveness by creating the right environment in order to be competitive.<sup>6</sup> In addition, patent protection is an important determinant of innovation. The moderate effect of IPR varies depending on economic development. "Patented innovations contribute to economic growth in developed countries, but not in developing countries."<sup>7</sup> It needs to be stressed that not only the power of IPR but also the type of IPR that is in line with economic development. When this capacity is weak, a system that provides incentives to make small and incremental discoveries is more conducive to growth.

This then has a detrimental effect on the welfare of the innovator. "IPRs that are subject to licensing fees cause innovation to become less frequent and less sophisticated. It is important to introduce an IPR system that does not hamper innovation."<sup>8</sup> On the other hand, "Stronger protection of IPRs with a monopoly on provisions, prevention of violations and restrictions on

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<sup>3</sup> Endang Purwaningsih, *Royalty Atas Lisensi Hak Kekayaan Intelektual Dalam Investasi Menurut Hukum Islam*. Proposal Penelitian, (Jakarta: Universitas YARSI, 2019) p. 1

<sup>4</sup> *Ibid*

<sup>5</sup> Xiaohui Yang and Huiying Zhang, 'Intellectual Property Rights, Migrants and Competitiveness', *International Journal of Development Issues*, 16.1 (2017), 43–53 <<https://doi.org/10.1108/IJDI-05-2016-0029>>.

<sup>6</sup> Huiying Zhang Xiaohui Yang, 'Intellectual Property Rights Protection and Export Quality', *International Journal of Development Issues*, 15.2 (2016) <<https://doi.org/http://dx.doi.org/10.1108/IJDI-11-2015-0071>>.

<sup>7</sup> Yee Kyong Kim and others, 'Appropriate Intellectual Property Protection and Economic Growth in Countries at Different Levels of Development', *Research Policy*, 41.2 (2012), 358–75 <<https://doi.org/10.1016/j.respol.2011.09.003>>.

<sup>8</sup> Julia Brüggemann and others, 'Intellectual Property Rights Hinder Sequential Innovation. Experimental Evidence', *Research Policy*, 45.10 (2016), 2054–68 <<https://doi.org/10.1016/j.respol.2016.07.008>>.

compulsory licenses can seem to increase the incidence of higher royalty contracts where patents are important for compliance..”<sup>9</sup>

“Understanding the concepts and principles of healthy copyright will protect the promotion of learning and public access rights, while protecting intellectual property rights themselves.”<sup>10</sup> Few know that the Copyright Act allows writers to terminate every sale and every license they run for decades. If this mechanism is used to terminate the agreement, and it turns out that there is no agreement, the copyright franchise will disappear.<sup>11</sup>

With the majority of the Muslim population, and many investors and consumers as well as Muslims, Islamic law offers a more concrete understanding of the use of intellectual property rights in the form of licenses and compensation. Some IPR provisions in general, codes of ethics, and innovations need to be reviewed further. Islamic law also plays an important role in aspects of life, especially in matters of muamallah.

IPR in Indonesian civil law is included in immaterial objects. So according to Islam HKI is a valuable object, as a valuable object HKI can be owned. In the dictionary al-Muhith, everything that can be owned can be categorized as property (al maal). Because IPRs are categorized as assets, IPRs are included in the category of Al-Muamalah Al-Madiyah fiqh.

## **B. METHODOLOGY**

The method used in this study is the study of literature or what people often refer to as literature studies. In a broader scope, this method includes a descriptive method of documentation. Data is collected using secondary data from relevant and up to date readings, especially reputable international books and journals. The collected data was analyzed using a thematic approach. Similar themes are grouped into one sub-analysis, then data is filtered, and conclusions are drawn. The results of the analysis and conclusions are then read to the peer reviewer for input. Based on the results of these improvements, the results of this study can be published.

## **C. RESULTS AND DISCUSSION**

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<sup>9</sup> Sadao Nagaoka, ‘Determinants of High-Royalty Contracts and the Impact of Stronger Protection of Intellectual Property Rights in Japan’, *Journal of the Japanese and International Economies*, 19.2 (2005), 233–54 <<https://doi.org/10.1016/j.jjie.2005.03.006>>.

<sup>10</sup> Ali Abdulla, ‘Copyright and Knowledge Advancement: A Case Study on the UAE Copyright Law’, *Library Management*, 29.6 (2008), 461–72 <<https://doi.org/10.1108/01435120810894491>>.

<sup>11</sup> Guy A. Rub, ‘Stronger Than ryptonite? Inaliebable Profit-Sharing Schemes in Copyright Law’, *Harvard Journal of Law & Technology* Vol.27 number 1 (2013), 51-74.

## Concept of Intellectual Property Rights

Intellectual property is the result of innovative creations and manifestations of ideas / ideas poured out, which then give birth to rights, and those rights need to be protected. Initially this concept was very highlighting individual interests, but gradually it could be accepted rationally. Justification / justification of IPR began to be accepted by various groups, both from developing countries and those who might become IPR licensees. According to Sudaryat, Sudjana and Permata<sup>12</sup>, IPR license is the right to enjoy the results of human intellectual creativity economically.

Everything on earth was created by God for human use. The freedom of a person to own and use his property is limited to those blessed by syara '. Therefore, in the ownership and use of assets, in addition to the personal benefit of property owners, also must be able to provide benefits and benefits for others. This is one of the social functions of the treasure, because, a property actually belongs to God which is entrusted to human hands.<sup>13</sup>

## Copyright Concept

As stated in article 1 paragraph 1 of Law Number 28 of 2014 concerning Copyright, it is stated that what is meant by copyright is, "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of the legislation."

Whereas the definition of copyright according to Article 1 Auteurswet (Property Rights Law) that, "Copyright is the sole right of the creators or the rights of those who get the rights, for their creation in the field of conscience, knowledge and art, to announce and reproduce keeping in mind the restrictions specified by the Act."<sup>14</sup>

There is often a misunderstanding of the basic concept of copyright, that copyright is only protecting and serving the interests and rights of the author (quasicopyright). While the nature of the original role of the original copyright is 'promoting useful knowledge and art.'<sup>15</sup>

According to Suhyeon Yoo and Kim that, "There are five options for obtaining copyright permits for material issued outside the country, namely 1) negotiating and making agreements directly with publishers; 2) paying collective copyright; 3) make bilateral agreements with national copyright collectives; 4) make a framework agreement with an

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<sup>12</sup> Sudaryat, Sudjana, Rika Ratna Permata. Hak Kekayaan Intelektual, Memahami Prinsip Dasar, Cakupan dan UU yang Berlaku. (Bandung: Oase Media, 2010) hal.15

<sup>13</sup> Musthafa Ahmad az-Zarqa', *Op Cit*, p. 89

<sup>14</sup> Saidin, *Aspek Hukum Hak Kekayaan Intelektual*, ed. Revisi. (Jakarta: PT. Raja Grafindo Persada, 2007)

<sup>15</sup> Rory McGreal, 'Copyright Wars and Learning Objects', *Interactive Technology and Smart Education*, 2.3 (2005), 141-53 <<https://doi.org/http://10.1108/17415650580000039>>.

organization that represents the copyright holder; and 5) incorporating collective licenses extended into copyright law.”<sup>16</sup>

There are at least three different copyright culture concepts as follows, "For writers who need long-term protection for the financial benefits of their work, for writers who need short-term protection for the financial benefits of their work, and for writers whose value depends on access over protection.”<sup>17</sup>

## **Royalty Concept**

In Article 1 paragraph (21) of Law Number 28 of 2014 concerning Copyright stated that, "Royalty is a reward for the utilization of the Economic Rights of a Work or Related Rights Products received by the creator or related rights owner." Royalty in English means honorarium,<sup>18</sup> and fees are fees, fees, and fees, which are fees that must be paid periodically for the use of concepts, systems, inventions, processes, methods, logos, brands or names based on franchise agreements, whether accompanied by a minimum or maximum number of bonds certain royalties or not.

Hendri E. Ramadhan said, royalty fees are fees from gross sales per month from the side of the copyright user to the copyright owner. In another book, he also argues that royalty fees are fees paid by the copyright user to the copyright owner for the support of the copyright granted. The form is a percentage of gross sales recorded by users of copyright. The reason for this royalty fee is because someone has used the copyright, so that it has become an obligation for him to pay a royalty fee and has become the right for the creator to accept the rights to his creation.<sup>19</sup>

Royalty fee is a profit sharing or profit on the utilization rights of intellectual property or the invention or characteristic of the business is obtained, by rewarding the copyright owner commonly called royalty. Royalty fees themselves run within a certain period of time that has been agreed upon between the user of the copyright as the authorizer by the recipient of the utilization right. Therefore a royalty fee is a running or periodic fee that must be paid by the copyright user to the copyright owner for the use of copyright as long as it is still in the contract.

Royalty fee is one of the sources of income for someone who has a copyright in something that is considered useful and favored by many people, so that a creativity originator sets a fee for what has been created with the aim of developing a better business

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<sup>16</sup> Suhyeon Yoo and Hyesun Kim, 'Copyright Clearing Methods for Electronic Document Delivery in Korea', *Interlending and Document Supply*, 41.2 (2013), 54–58 <<https://doi.org/10.1108/ILDS-02-2013-0007>>.

<sup>17</sup> Michael Seadle, 'Copyright Cultures', *Library Hi Tech*, 25.3 (2007), 430–35 <<https://doi.org/10.1108/07378830710821005>>.

<sup>18</sup> Saidin, op.cit.

<sup>19</sup> ibid

The royalty fee system in the franchise business is determined based on a certain percentage calculated from the amount of production or franchised services sold. The purpose of being charged a fee from the franchise itself is so that a business can be mutually beneficial and help for the continuity of the business. In general, the fee charged to the franchisee is 1% - 12% of gross income per period.

In the business of collaborating with book printing with a royalty system, cooperation is formed because of the presence of an intellectual property owner who gives special rights and authority over their use to other parties. Book authors and publishers are two parties that make mutual agreements that both have an obligation to fulfill certain achievements with the principle of openness and caution. This is in accordance with the pillars and the terms of the contract according to Islamic law and the prohibition of "Gharar" transactions (obscurity).

In Indonesian law, it is known as a principle called the principle of freedom of contract. The point is that the parties are free to enter into any contract as long as it does not conflict with applicable law, customs, politeness or other matters relating to public order.<sup>20</sup> In fact, it is recognized by the Law that agreements that are legally made have the force that applies as the force of enactment of the Law. As stated in Article 1338 paragraph (1) of the Civil Code on the principle of freedom of contract: "All agreements made legally apply as laws for those who make them. An agreement is irrevocable other than by agreeing with both parties, or for reasons reasons stated by law as sufficient for that."<sup>21</sup>

Therefore, a copyright issuance agreement made by parties (users of copyright and copyright owners) acts as a law for them. The same is true of the agreement on liabilities to royalty fees. In addition, the Fatwa of the National Syari'ah Council No: 15 / DSN-MUI / IX / 2000 also stated: "Judging from the aspect of benefit (al-ashlah), at present, the sharing of revenue should be used as a principle of profit sharing. The purpose of the fatwa is that the best form of profit sharing from a collaboration is to use a profit sharing system. Thus, the legal basis for royalty fees is clearly permitted in the practice of commerce, provided that they are mutually pleasing or agree and fulfill the promises agreed upon between the two parties."

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<sup>20</sup> Endang Purwaningsih, loc.cit

<sup>21</sup> Munir Fuadi, *Pengantar Hukum Bisnis Menata Bisnis Modern di Era Global*, Jakarta: Citra Aditya Bakti, 2005

## Giving Royalty Fee

An Islamic Royalty system, a sharia value system is needed as a business moral filter that aims to avoid various moral hazards, namely Maysir (speculation), Asus, Gharar (fraud), Haram, Riba, Ikhtikar (hoarding / monopoly), Dharar (dangerous).<sup>22</sup>

Profit sharing is a principle of determining the benefits given to other parties in connection with the existence of cooperation (musyārahah), where both parties contribute to each other with an agreement that the benefits and risks will be borne together according to the agreement. The profits in the muamalah transaction must be clearly discussed and the profit sharing system must be contained in the contract transparently, to avoid possible disputes. Each partner's profit must be distributed proportionally on the basis of all profits and there is no set amount at the beginning for a partner. A partner may propose that if the profit exceeds a certain amount, the excess or percentage is allocated according to the agreement. And may not take advantage of items that are not in hand.<sup>23</sup>

In the rules of Shari'ah, matters relating to the distribution of business profits must be determined first at the beginning of the contract (contract). The size of the determination of the portion of profit sharing between the two parties, determined according to mutual agreement and must occur with the willingness (an-taradlīn) on each party without any element of coercion.<sup>24</sup>

All transactions using profit sharing schemes must at least meet three conditions.<sup>25</sup> First, the contract for profit sharing must be clear. In it clearly stated, the type of business to be carried out is also stated, the profits and losses will be borne together. In this case, it may not promise a definite advantage in advance. Because a business is not necessarily always in a stable state, but if you estimate the amount of profit is allowed. Profit sharing in sharia does not recognize the imposition of absolute profits in advance to its investors. But on the contrary, it is also agreed that if the business suffers a loss, both the copyright owner and the user of the copyright that runs the business will bear it together. In this case, the problem is the risk that must be borne.

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<sup>22</sup> Linda Firdawati. "Perjanjian Waralaba Menurut Hukum Islam," <https://media.neliti.com/media/publications/177890-ID-none.pdf> accessed 18 June 2019

<sup>23</sup> Nurjannah, dan Wahid, N. 2013. "Analisis Perhitungan Royalty Fee Franchise Menurut Konsep Musyarakah: Studi Pada Jarimatika Darussalam," *SHARE Volume 2 Number 2 July - December 2013 p.119-150* <http://jurnal.ar-raniry.ac.id/index.php/Share/article/view/1495/1093>

<sup>24</sup> Ibrahim, Azharsyah. (2012, 26-28 March). *Praktik Ekonomi Masyarakat Aceh dalam Konteks Ekonomi Islam*. Paper presented at the Aceh Development International Conference, Kuala Lumpur, Malaysia

<sup>25</sup> Nurjannah, dan Wahid...op cit

Second, business objects must be clear, transparent. There is no element of gharar (deception), and should not be speculation. Third, there must be supervision. This step is to monitor the course of the business so that if things happen that are not desirable have been detected early.

The general form of profit sharing business is musyārahah (syirkah or syarikah or union or partnership). The musyārahah transaction is based on the desire of the parties to work together to increase the value of the assets (copyrights) they have together. Included in the musyārahah group are all forms of business that involve two or more parties where they jointly integrate all forms of resources both tangible and intangible. Specifically the form of contributions from collaborating parties can be in the form of funds, trade goods, entrepreneurship, skill, property, equipment, or intangible assets (such as patents or goodwill), credit worthiness and other items that can be valued with money. By summarizing all the combinations of the forms of contributions of each party with or without time limits this product makes it very flexible.<sup>26</sup>

From the explanation above, it is clear that the royalty fee known in the contract or the book printing cooperation agreement is the equation of the profit sharing (profit) in muamalah fiqh, the size of which can not be determined at the beginning except the profit ratio.<sup>27</sup>

In addition, the need to internalize Islamic ethics in business transactions will produce optimal and individual results more rationally. "The incentives for perpetual rewards (reward) and threats of punishment (God's prohibitions) will overcome the problem of moral hazard and restore ethical behavior as balance. The intended balance is the best interest of all people to behave ethically."<sup>28</sup>

### **Royalty Fee in the Concept of Profit Sharing for Copyright**

Royalty fees are the same as profit sharing in musyārahah contract. Etymologically musyārahah or ash-syirkah means mixing, which is a mixture of something with another association, the union of two dimensions or more into one unit. In the Encyclopedia of Islamic Law, syirkah comes from Arabic which means fellowship, partnership and association. Whereas in terms of Fiqh, syirkah means fellowship or partnership between two or more people to do business together with the aim of gaining profit.<sup>29</sup>

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<sup>26</sup> Nurjannah, dan Wahid,...op.cit

<sup>27</sup> ibid

<sup>28</sup> Bashir, Abdel H." Ethical Norms and Enforcement Mechanisms in the Profit Sharing Agreement." *Mid-Atlantic Journal of Business*, 1 Des 1998, pp.255. OneFile Akademik, accessed 1 July 2019.

<sup>29</sup> Abdul Aziz Dahlan, *Ensiklopedi Hukum Islam*, (Jakarta: Ichtiar Baru Van Hoeve, 1996).



According to the terminology, syirkah is a collaboration between two or more people in the field of business or economics, cooperating in a trade business or in assets, to obtain mutual benefits with certain agreed terms and conditions. Musyārahah can also be interpreted as an agreement that requires the certainty of a property of two or more people for a purpose with an equal distribution of profit and loss systems. There is also a definition of a mixture of shares or capital of someone with other people so that the two capital can not be distinguished, in the syirkah property there is a determination of each party's part based on the agreed upon provisions.<sup>30</sup>

According to the Hanafi School of Society means: a contract between two people who share in terms of capital and profits (Zuhaili, 2002). According to the priest Maliki, syirkah is an ability to act legally (bertasharruf) for two people who cooperate in managing their property. Whereas according to DSN Fatwa NO: 08 / DSN-MUI / IV / 2000 concerning Musyārahah Financing, namely financing based on cooperation agreement between two or more parties for a particular business, where each party contributes funds provided that profits and risks will jointly borne in accordance with the agreement.<sup>31</sup>

The fiqh scholars generally argue that cooperation in business matters (book printing in the form of royalties) can be called syirkah. Syirkah is divided into two main classifications namely syirkah al-amlak and syirkah al-uqud. Syirkah al-amlak has called it the ownership musyarakah, some have called it a union in ownership and some have called it a company owned by.<sup>32</sup>

While syirkah al uqud there are those who call it musyarakah aqad (contract), some call it a union of aqad:<sup>33</sup> 1) Syirkah amlak (property), namely: a partnership between two or more people to have an object, syirkah amlak is divided into 2, namely syirkah ikhyar and syirkah jabbar; and 2) Syirkah akad, which is a partnership between two or more people arising from an agreement.

Imam Taqyuddin An-Nabhani<sup>34</sup> calling syirkah akad a transaction company that is a company whose object is the development of property rights. In terms of book printing, the

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<sup>30</sup> Baihaqi A. Samad, *Konsepsi Syirkah dalam Islam, Perbandingan Antar Mazhab*, Banda Aceh: Yayasan Pena dan Ar-Raniry, 2007.

<sup>31</sup> Fatwa Dewan Syariah Nasional No: 15/DSN-MUI/IX/2000, 16 September 2000, diakses pada tanggal 17 Juni 2011 dari situs: <http://www.badilag.net/data/fatwa%20mui%20edit/15%20%20prinsip%20distribusi%20hasil%20usaha%20dalam%20lembaga%20keuangan%20syari%27ah.htm>

<sup>32</sup> ibid

<sup>33</sup> Nasrun Haroen (2) *Ushul Fiqh 1* (Jakarta. PT Logos, Wacana Ilmu, 2001. p. 167

<sup>34</sup> Taqyuddin An-Nabhani, *Membangun Sistem Ekonomi Alternatif Perspektif Islam* (terjemah Moh maghfur Wachid , An-Nidlam Al-Iqtishadi Fil Islam) Surabaya: Risalah Gusti 1996) p. 365

ownership rights of the author are intellectual property rights in the form of copyright, working with the issuer (capital owner) to print books, which are traded / commercialized in order to obtain mutual benefits, so that profit sharing can be made obtained fairly. a) Syirkah amwal, which is a partnership between two people or more in capital / assets; b) Syirkah a'mal, which is a partnership agreement between two or more people to accept work from a third party to be worked together with the stipulation of wages divided into two; c) Syirkah wujud, which is an alliance between two people or more with assets from outside parties, and d) Syirkah mudharabah, which is an agreement between capital owners and workers as business managers to manage money from the owners of capital in certain trades, whose profits are divided according to mutual agreement.<sup>35</sup>

Syirkah mudharabah is a partnership (partnership) between labor and assets, which is managed for business, provided that the profits (profits) obtained will be divided according to the agreement of both parties.

If it is observed from the point of view of the agreement that is held in cooperation in the form of royalties, it can be stated that the agreement is actually an extension of the form of cooperation (syirkah). It can be understood that with the agreement to give royalties for a certain time (according to the agreement). The cooperation is intended to benefit both parties by means of cooperation in the form of granting permission to use writing (copyright), or utilizing the findings.<sup>36</sup>

In the case of collaborating with book printing in the form of royalties, one party (the author) issues energy and thoughts in the form of written copyrights and the other party (the publisher, including those who market the book) only issues business capital with the agreement of the benefits. In the operational activities of book printing cooperation also applied the principles of openness, honesty and prudence.

The agreement to print books in the form of giving royalties to the author basically does not conflict with Islamic law. Of course with a note that the object of the agreement is not something that is prohibited in Islamic law. If the printed object is something that is prohibited in Islamic law, the agreement will automatically conflict with the Islamic Shari'a. Islamic law in the field of mu'amalah (economy) the law of origin of all things is permissible unless there is a proposition that indicates that something is forbidden. In the business system there is

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<sup>35</sup> Muhammad Syafi'I Antonio, *Bank Syari'ah dari Teori ke Praktek*, Jakarta, Gema Insani press dan Tazkia cendikia, 2001

<sup>36</sup> Linda Firdawati. "Perjanjian Waralaba Menurut Hukum Islam," <https://media.neliti.com/media/publications/177890-ID-none.pdf> accessed 18 June 2019

actually an element of justice between two business people, namely the writer as the copyright owner and the publisher as a business partner.<sup>37</sup>

Related to royalty according to Islamic law, especially in book publishing, book royalties are payments given by publishers to book authors in the form of a certain percentage of the selling price of the book in a certain period. The royalty system for books like this is not valid (facade) in syar'i, because it contradicts the method of profit sharing in Islamic syirkah law, especially syirkah mudharabah, in two aspects. First, in the book royalty system, the payment received by the author of the book is already known in nominal amounts, even if expressed in percentage. For such results in Islamic syirkah law is not permitted and results in syirkah being a facade. Second, in the royalty system, the amount of payment received by the author of the book is expressed as a percentage of the selling price of the book, for example 10% of the selling price of the book of Rp. 30,000. This is contrary to Shirkah law in Islam, because the amount of payment received in syirkah mudharabah should be expressed as a percentage of profit (profit), not a percentage of the price of merchandise (in this case the book).<sup>38</sup>

The basic principle of bermu'amalah (cooperation in the printing of books in the form of royalties) that must be fulfilled in the agreement is an activity that contains maslahat, upholds the principle of justice, honesty, helps one another, does not complicate, likes and likes away from all forms of usury.<sup>39</sup>

Construction of agreements based on Islamic law (including cooperation in printing books in the form of royalties), besides having to fulfill the principle of bermu'alah, must also be fulfilled in harmony and the legal terms of the agreement. In addition, there are provisions regarding the obligation to fulfill the agreement and the prohibition on cooperating to commit a sin, as well as the ability for parties to carry out legal actions.<sup>40</sup>

The pillars of the agreement (in this case is the collaboration of printing books in the form of royalties) according to Jumhur ulama are: a) The parties that make the contract b) Object contract c) Statement of the will of the parties The legal conditions of contract / agreement are fulfilled the purpose of the contract as a principal result from a contract.<sup>41</sup>

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<sup>37</sup> Muhammad Yusuf, Tinjauan Konsep Bisnis Waralaba (Franchise) Berdasarkan Ketentuan Hukum Islam, Universitas Sebelas Maret

<sup>38</sup> <https://baitul-khair.or.id/2019/01/05/hukum-royalti-buku-dalam-islam/diakses> 18 Juni 2019

<sup>39</sup> Linda Firdawati. "Perjanjian Waralaba Menurut Hukum Islam," <https://media.neliti.com/media/publications/177890-ID-none.pdf> accessed 18 June 2019

<sup>40</sup> ibid

<sup>41</sup> ibid

The conditions that must be fulfilled so that the purpose of the contract is deemed legitimate and has legal consequences are: a) the purpose of the contract is not an existing obligation for the parties concerned without the contract held, b) the purpose must last until the end of the contract implementation, and c) The purpose of the contract must be justified *syara*'.<sup>42</sup>

### **Cooperation Mechanism with Royalty Method**

In the business working mechanism the cooperation in printing books using the Shari'a-based royalty method must be based on the principle of justice and mutual benefit for both parties. Between writers and publishers must instill the value of honesty in carrying out business cooperation, do not let tyranny happen to each other. In addition, it must also prioritize good business ethics as the key to business success. The provisions of *syirkah*, especially *syirkah abdan* and *syirkah inan* are theories that can be used as the basis for conducting business in collaborating with book printing using the *syari'ah*-based royalty method.

In the payment of business royalty fees, the cooperation in printing books using the Shari'ah-based royalty method, in accordance with the *Shirkah Abdan* and *Syirkah Inan* rules which in the contract of profit sharing of two partners cooperating is permitted after the business runs, in the distribution of business profits must be Shari'ah based and must be based on principle of profit sharing gross profit and net profit.

In the form of cooperation in the printing of books in the form of royalties, those who will invest in a business or company no longer participate in capital or shares in the form of cash deposits or enter tangible goods or objects, but simply surrender the use of intellectual property right) in this case copyright to a company or business entity based on an agreement. For those who receive the right to use intellectual property rights, they benefit from the process of publishing and selling the copyright given by the first party (the author).

Such cooperation cannot be separated from the concept of royalty fees that exist in the business. So, royalty fees are fees that must be paid every month from gross sales after tax. Generally, this fee is used by publishers to support authors in creating their intellectual work in the form of copyright.

In carrying out business activities in the collaboration of book publishing with royalty systems based on sharia, the principle of fairness of cooperation is needed in business activities so that the business can bring benefits to both parties and does not harm one of the parties working together. Likewise in determining the royalty fee, the issuer must be fair in determining

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<sup>42</sup> Ahmad Azhar Basyir, *Azas-azas Hukum Mu'amalah (Hukum Perdata Islam)* Edisi Revisi, Yogyakarta :UII Press Yogyakarta, 2000. p. 99-100

how much profit must be paid in paying the royalty, not to only benefit the issuer, while the author is greatly disadvantaged, due to fraud in terms of the number of books published, prices on the market, and the number of books sold.

#### **D. CONCLUSION**

Intellectual property is the result of innovative creations and manifestations of ideas / ideas poured out, which then give birth to rights, and those rights need to be protected. Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a work is manifested in a tangible form without reducing restrictions in accordance with the provisions of the legislation. Copyright is only protecting and serving the interests and rights of the author (quasicopyright). While the nature of the original role of the original copyright is 'promoting useful knowledge and art.

Royalties are rewards for utilizing the Economic Rights of a Work or Related Rights Products received by the creator or the owner of the related rights. "Royalty in English means an honorarium. Royalty fee is a fee that must be paid periodically for the use of concepts, systems, inventions, processes, methods, logos, brands or names based on a franchise agreement, whether or not accompanied by a minimum or maximum amount of certain royalties.

An Islamic Royalty Management System, a sharia value system is needed as a business moral filter that aims to avoid various moral hazards, namely Maysir (speculation), Asus, Gharar (fraud), Haram, Riba, Ikhtikar (hoarding / monopoly), Dharar (dangerous).

Management of royalty fees must be determined in advance at the beginning of the contract (contract). The size of the determination of the portion of profit sharing between the two parties, determined according to mutual agreement and must occur with the willingness (an-taradlīn) on each party without any element of coercion. the sharing contract must be clear. In it clearly stated, the type of business to be carried out is also stated, the profits and losses will be borne together. In this case, it may not promise a definite advantage in advance. Royalty fee known in the contract or book printing cooperation agreement is an equation of profit sharing (profit) in muamalah fiqh, the size of which can not be set at the beginning except the profit ratio

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