

LEGAL PROTECTION OF THE BUR'AM TRADITIONAL MUSIC COMMUNITY FROM THE PERSPECTIVE OF ISLAMIC ECONOMIC LAW

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Abstract

This research aims to analyse the form of dispute and settlement over the similarity of the name and quality of the Bur'am Banda Aceh Traditional Music Community, as well as the legal certainty of the Community's name rights in the perspective of *haq ibtikar*. Bur'am Music Community, which was first established in Banda Aceh, has become an icon of Acehese traditional art through the use of *rapai* instruments. However, the name Bur'am is also used by other communities in various regions such as Bireuen, Sabang, and Yogyakarta, raising concerns regarding the clarity of the origin and original creator of this Community. The research approach used is empirical juridical with descriptive type of analysis, and data collected through interviews and documentation. The results show that name similarity disputes can be resolved through mediation, by emphasising the history of the establishment and the identity of the founders. If mediation is fruitless, registration of the name Bur'am as a copyright or trademark becomes a necessary legal step to provide exclusive protection to the name. From the perspective of *haq ibtikar*, the name Bur'am meets the criteria of originality, creativity and usefulness, and thus deserves to be recognised as intellectual property equivalent to property in Islamic law. This recognition supports the preservation of Acehese traditional arts and prevents potential conflicts in the future. The legal protection of the Bur'am name not only protects the rights of the creator, but also ensures the authenticity and identity of Acehese traditional art as a valuable cultural heritage.

Keywords: Aceh, Bur'am traditional music, Copy Right, and Islamic Economic Law,

INTRODUCTION

Intellectual Property Rights (IPR) are rights that arise from the intelligence or ability of humans to create works or ideas in the fields of art and literature, science and technology. So that every work owned by humans must be protected ethically, moral and legally.¹ According to Huzomi, IPR is a right that comes from the work, passion, and copyright of humans because it is born from the ability of human intellect and is the result of creative activities of a human mind that is expressed to the general public in various forms, which has benefits and is useful in supporting human life and also has economic value.² The most important essence of each part of IPR is the existence of a particular creation. The real form of the creation can be in the fields of technology, science, art and literature.³

One that is categorised into IPR is the right of a person to maintain something that was created in the form of a brand, name, or form of something created, copyright itself is one of the human rights listed in the Universal Declaration of Human Rights (General Declaration of Human Rights) and *UN International Conventions* is also a very important legal right that protects cultural works.⁴ Copyright protection in today's digital age is to provide copyrights that will be used by the public in order to resolve problems or legal conflicts over copyright in the digital age now.⁵

One form of IPR is the creation of a trademark, a trademark is one form of intellectual work. which is used to distinguish goods and services produced by a company with the intention of showing the characteristics and origin of the goods.⁶ In the trademark law itself, the criteria for trademarks also vary, there are trademarks, service marks, collective marks. According to the Director General of IPR of the Ministry of Law and Human Rights, argues that

¹ Muhammad Achyar, Chairul Fahmi, dan Riadhus Sholihin, "ISLAMIC LAW REVIEW OF MONOPOLY PRACTICES IN MODERN ECONOMICS," *Al-Mudharabah: Jurnal Ekonomi dan Keuangan Syariah* 5, no. 2 (2024): 288-308.

² Tamotsu Hozumi, *Asian CopyRight HandBook: Buku Panduan Hak Cipta* (Jakarta: Ikapi, 2006).

³ Budi Agus Riswandi and Siti Sumartiah, *Contemporary IPR Issues* (Yogyakarta: Gita Nagari, 2006).

⁴ Iwandi Iwandi, Rustam Efendi, dan Chairul Fahmi, "THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 4, no. 2 (29 September 2023): 14-39, <https://doi.org/10.22373/al-mudharabah.v5i2.3409>.

⁵ Tamotsu Hozumi, *Asian CopyRight HandBook: Copyright Handbook* (Jakarta: Ikapi, 2006).

⁶ Muhammad Ahkam, Suprapedi, dan Subroto, *Pengenalan HKI: Konsep Intelektual untuk Penumbuhan Inovasi* (Jakarta: Indeks, 2008).

the name of a music community can be categorised as a service mark. Learning from the cases that have arisen, said the DG, it is necessary to hold socialisation in Indonesia so that the music community that is already famous in Indonesia registers it as a trademark.⁷

Accordingly, it is justified to protect the name of the music community by registering a brand. As stipulated in Law no. 19 Year 2002 on trademarks. In Article 1 paragraph 1, it is said that a trademark is a sign in the form of a picture, name, word, letters, numbers, colour arrangement, or a combination of these elements that has distinguishing power and is used in data on trade activities of goods or services.⁸

The basic concept in the trademark is set on the principle of *first to file*, which is the principle of the first trademark registration system, meaning that the party who first filed trademark registration application to the Directorate General of IPR is given priority to obtain trademark registration and is recognised as a legitimate trademark owner.⁹ Legal protection of the trademark is a necessity to protect the intellectual rights and property rights of the holder or owner of the trademark. Illegal use of the trademark by other parties can be prosecuted by the trademark owner by filing a lawsuit in the form of compensation, or the cessation of all acts related to the use of the trademark.¹⁰

Protection of the trademark owner must be done to avoid financial losses and also distortion of intellectual rights as a result of the intellectual creativity that has been produced by the trademark holder. The government must protect every trademark holder from various actions that can harm their property rights. The act of copying the brand is very detrimental to the actual brand owner because the copycat does not need to promote the brand because the copyrighted work is already known by many people, let alone the brand is well known and has been used by many people. In addition, trademarks can also prevent people from cheating and competing unfairly, although competition in the business world is commonplace, but in reality, there are often acts of imitation and duplication of well-known brands. This is very

⁷ Ronal Agusmi dkk., "The Implications of Repealing The Law of Mandatory Company Registration on The Company Legality After The Enaction of Indonesia's Job Creation Law," *Syariah: Jurnal Hukum Dan Pemikiran* 22, no. 1 (25 Juni 2022): 109–22, <https://doi.org/10.18592/sjhp.v22i1.6485>.

⁸ Law Number 19 Year 2002 on trademarks

⁹ Muhammad Djumhana and R. Djubaedah, *Intellectual Property Rights: History, Theory and Practice in Indonesia* (Bandung: Citra Aditya Bakti, 2003).

¹⁰ Hery Firmansyah, *Legal Protection of Trademarks* (Yogyakarta: Yustisia Library, 2011).

detrimental to various parties, be it producers, copyright holders and also consumers.¹¹

Article 3 of Law No. 15 Year 2001 on Trademark, in the article explained that the *right to trademark is an exclusive right granted by the state to the owner of the trademark registered in the public register of trademarks for a certain period of time by using the trademark itself or give permission to other parties to use it.*¹² With the provisions of Article 3, the trademark holder has the exclusive right to utilise the trademark right for its interests because it has commercial value that brings benefits and profits in the form of financial that can be used as desired. The exclusive trademark holder can also delegate its authority to other parties in the form of licences that can be used to obtain profits.

As a trademark holder who has exclusive rights can do various forms of protection to protect its interests as the owner who holds the trademark. This protection is done to prevent potential losses made by other parties to obtain profits illegally. Protection of the trademark that has been authorised by the State is very important so that the trademark holder can benefit maximally according to the authority granted by the State.¹³

This protection is done to prevent exploitation of other people's rights that normatively should be protected from various actions that can cause harm both financially and socially. Legal protection of the brand and the brand holder must be done to prevent the emergence of harm to various parties both brand holders and consumers, because usually a brand has certain quality standards and benefits offered to consumers, so that its existence in the market has a strong position with certain achievements.¹⁴

In the concept of Fiqh, the brand has a concrete discussion as *haq al-Ibtikar* which is very varied discussion among fuqaha. *Ibtikar* is only an image of thought and this image will have a wide effect if it has been presented or written on a medium. For example, *Ibtikar*'s thoughts are actually just a description of thoughts that have not yet taken material form. However, if these thoughts are written down in a book, then they will be widely influential both in terms of material and thought. Therefore, according to the fiqh scholars, *Ibtikar*, when viewed from a material point of view, is more akin to

¹¹ World Intellectual Property Organisation, *Creating a Brand (An introduction for small and medium enterprises)* (Jakarta: Indonesian Chamber of Commerce, 2008).

¹² Mochtar Kusumaatmadja, *Introduction to Legal Science* (Bandung: PT. Alumni, 2009).

¹³ Lindsey, *Intellectual Property Rights, An Introduction* (Bandung: PT. Alumni, 2013).

¹⁴ Afrillyanna Purba, *TRIPs-WTO Indonesian IPR Law (Review of Copyright Protection of Indonesian Traditional Batik Art)* (Jakarta: PT. Rineka Cipta, 2005).

the benefits of a material product, such as fruits and milk, when it has been plucked from the tree and milked from the animal. This is because once a person's thoughts are separated from his thoughts and exposed to a medium, they become material.¹⁵

The scholars of Fiqh are unanimous in stating that the ownership rights of the Mubtakir (thinker and creator of a creation) over the results of his thoughts and creations are material property rights. Therefore, *Haq Ibtikar* when associated with the character or property can be transacted, can be inherited if the owner dies, and can be made a will if someone wants to will. Thus, copyright or creation fulfils all the requirements of a treasure in Islamic Fiqh, as well as having the same position with other assets that are halal. Therefore, the scholars of Fiqh, stating that copyright or creation of a person should get the same legal protection as other rights. However, imam al-Qaradawi, a Maliki Fiqh expert, argues that although the *Haq Ibtikar* is a right for the thinker, but this right is not property, even not related to property at all.¹⁶

One of the arts that require brand protection is the Bur'am traditional music community in Banda Aceh, Bur'am music community is a musical community group that performs poetry through *rapai* music accompaniment, Rapai is known by the people of Aceh as a dance accompaniment instrument or as a group that plays verses of *shalamawat*, Acehnese *hikayat*, advice, or stories that can please the people of Aceh, Rapai instruments are usually played in studios in Aceh.

Bur'am Community Banda Aceh is one of the communities that play Rapai instruments. Rapai instrument patterns that are collaborated with old poems are packaged in a unique and contemporary way so that people are interested in hearing them, not only old poems are collaborated with rapai but there are also new poems created by the Bur'am Banda Aceh Community simultaneously and packaged with traditional musical instruments. The Rapai instrument presented by the Bur'am Community in the form of a performance attraction with a circular sitting pattern wearing all white clothes and black caps. The material they bring is Acehnese poems with Rapai instruments.

The current phenomenon is that there are rapai music communities in other regions that also use the name "Bur'am" Community while containing members who are different from the Bur'am members in Banda Aceh, so that

¹⁵ Nasrun Haroen, *Fiqh Muamalah*, (Jakarta: Gaya Media Pratama, 2007).

¹⁶ Nasrun Haroen, *Fiqh Muamalah*. (Jakarta: Gaya Media Pratama, 2007).

many people suspect that the Bur'am Community in other regions is the same as the Bur'am Community in Banda Aceh, one of which is the traditional music community of Bireuen which uses the name "Bur'am" Community while in composition this music community from Bireuen has a completely different management and members.

The fear is that other music communities using the name "Bur'am" could cause confusion among fans and the general public. This misuse could blur the original identity of the Bur'am Community and reduce the value of the Community's authenticity, then if other music Communities using the name "Bur'am" do not maintain quality standards or deviate from tradition, this could damage the reputation of the original Bur'am. Such mistakes, scandals or inconsistencies from other Communities could negatively affect the public perception of the original Bur'am, given that it is a community that was pioneered from scratch to become one of the most successful traditional music Communities today.

Bur'am traditional music community is one of the representations of Aceh's cultural heritage that has high historical and artistic value. However, its existence faced challenges when a dispute over the similarity of its name with another music community allegedly affected the quality and identity of the community in the eyes of the public. This dispute raises issues that not only impact on reputation, but also on intellectual property rights that should be attached to the name Bur'am. This issue becomes even more complex when there is no clear and adequate resolution to the claim of similarity of name and quality, resulting in legal uncertainty for the parties involved.

One important aspect that needs to be studied is how this dispute is resolved within the legal framework, whether through mediation, negotiation, or formal legal channels. In addition, it is important to examine the extent to which legal certainty over the rights to the name Bur'am music community can be guaranteed, especially in the perspective of *Haq Ibtikar* which emphasizes the importance of respect for creativity and innovation. This research seeks to explore the forms of disputes that occur, dispute resolution mechanisms, and efforts to provide legal certainty for the name rights of the Bur'am music community, with the hope of contributing to the preservation of cultural values as well as the protection of intellectual property rights in Aceh.

RESEARCH METHODS

The approach that the author uses in this research is a qualitative empirical juridical approach, empirical juridical, which is research conducted by examining various formal legal rules such as laws, regulations and literature containing theoretical concepts which are then related to the problems to be discussed in this writing.¹⁷ This research is studied normatively by studying and examining the scope and material related through the norms contained in Islamic teachings in the form of the Koran, hadith, books on Islamic economics, books on intellectual property rights, MUI fatwa, Fiqh books, and the Act on intellectual property rights in force, which explains the protection of copyright in the perspective of *Haq Ibtikar*.

The type of research that the author uses in this research is descriptive analysis, namely a method for analysing and solving problems that occur now and, in the future, based on a description of the phenomena that occur can be seen and heard from the results of research both in the field or theory, in the form of data and books related to the discussion. Data sources are references used to obtain research data, such as informants or respondents, documents, records of objects and a process that can be collected through interviews and documentation. To obtain data that is in accordance with the object of study in the form of primary data and secondary data, then in this case the author uses two types of research, namely *field research* (field research) and *library research* (library research).

RESULTS AND DISCUSSION

A. The Concept of *Haq Ibtikar* and Copyright in Indonesia

1. Definition and Legal Basis of *Haq Ibtikar*

Haq Ibtikar consists of two phrases: "*haq*" and "*Ibtikar*". The speciality that a person or group of people have over something is included in the definition of "*haq*". The word "*haq*" indicates ownership or authorisation over a new copyrighted work (*Ibtikar*) within the scope of *Haq Ibtikar*. The word "*Ibtikar*" comes from the Arabic *isim mashdar*. *Ibtakara*, which means to create, is the old form of this word (*fi'il madhi*). "*Ibtakara alsyai'a*" is a word that means "He has created something".¹⁸

¹⁷ 2003037702 Muhammad Siddiq Armia, *Penentuan Metode Pendekatan Penelitian Hukum* (Banda Aceh: Lembaga Kajian Konstitusi Indonesia (LKKI), 2022), <https://repository.ar-raniry.ac.id/id/eprint/22862/>.

¹⁸ A.W. Munawwir, *Munawwir Dictionary*,

The terminological definition of *Haq Al-Ibtikar* is not found in classical fiqh literature that discusses *Haq Ibtikar* systematically, so it is difficult to know its definition from classical fiqh figures. However, there is a lot of talk about *Haq Ibtikar* in the discussions of modern fiqh scholars. *Ibtikar*, according to Dr Fathi ad-Duraini, a professor of jurisprudence at the University of Damascus, Syria, is a description of a thought produced by a scientist through his ability to think and analyse, and the result is a discovery or creation that is first or has not been proposed by previous scientists.¹⁹

Based on this definition, ideas do not have a physical form that can be perceived by the human senses. However, these ideas can have an impact when realised in works such as writings, videos, books, or other media. The results of these ideas are not the result of copying or repeating the ideas of previous scientists, nor are they adaptations. However, *Ibtikar* is not entirely new; rather, it can be considered an invention that builds on the theories of previous scientists, including translations of ideas from foreign languages.

Ibtikar is merely a description of a powerful and far-reaching thought that can be conveyed or written in print or other media. As *Ibtikar*, a scientist's thoughts are images of thoughts that have not yet materialised. Nonetheless, when these ideas are put into any form of media, the results will have a far-reaching impact mentally and materially. Therefore, according to fiqh scholars, *Ibtikar* in terms of material is more similar to the benefits of objects or materials. For example, fruits and milk are plucked from trees or milked from animals. In addition, a person's thoughts become material after they are separated from his thoughts and delivered in seminars, media, or other places.²⁰

In Islam, copyright is considered part of valuable property. Like any other property, copyright is protected as long as it does not contradict the applicable law. *Haq Ibtikar* is a material ownership right that the creator has over his work. The creator is entitled to benefit from his work, either through his own use or by other parties. In addition, the creator also has the authority to determine whether or not his *Haq Ibtikar* can be used by others. This right has a legal status equivalent to property ownership, so it can be sold or inherited. The government is responsible for protecting this right from threats through regulations established by law.²¹

¹⁹ Nasrun Haroen, *Fiqh Muamalah* (Gaya Media Pratama, 2007).

²⁰ Masduki and Nana, *Fiqh Mu'amalatul Madiyah* (Bandung: IAIN Sunan Gunung Djati, 2010).

²¹ Rashid Sulaiman, *Islamic Jurisprudence* (Jakarta: Attahariyah, 2010).

There are several opinions of scholars regarding copyright including:

- a. According to Dr Fathi Al-Duraini in *Haq Ibtikar Al-Fiqh*, Al-Islam, AlMuqram. According to the majority of scholars from the Maliki, Shafi'i and Hambali schools of thought, the rights to original creations and their benefits are also included in valuable property as well as property that is used by Shara'.²²
- b. According to Wahbah Al-Zulaihy in *Fiqh Al-Islami Wa Adilatuhu* that relating to Haq Al-Ta'lifi one of them copyright is something that is protected by shara' on the rule, then plagiarise, duplicate, reproduce without permission of the copyright owner is an injustice and seen as a crime or violation of prohibition. These actions can lead to sin in the view of shara'. The person who does it must ask forgiveness for the sin and compensate the copyright.²³

The legal basis of *Haq Ibtikar* itself is in the Qur'an Surah An Nisa' Verse 29:

يَا أَيُّهَا الَّذِينَ آمَنُوا لَا تَأْكُلُوا أَمْوَالَكُمْ بَيْنَكُمْ بَاطِلًا إِلَّا أَنْ تَكُونَ تِجَارَةً عَنْ تَرَاضٍ مِّنْكُمْ وَلَا تَقْتُلُوا أَنْفُسَكُمْ إِنَّ اللَّهَ كَانَ بِكُمْ رَحِيمًا

"O you who believe! Do not eat of your neighbour's wealth in an unlawful manner, except in trade that is mutually agreed upon between you. And do not kill yourselves. Indeed, Allah is Most Merciful to you" (Q.S. An-Nisa: 29).

Haq Ibtikar is a new thing and there is no legal text (specific evidence) from the Qur'an or Hadith. Ijtihad can be based on: (1) "*urf* (a custom or can be generally accepted in a society). Customs that have been running and generally accepted can be used as a basis for law, as in the rules of Islamic law: "Customs can be established as law". (2) *Maslahah Mursalah* is something that is considered *maslahat*, but there is no firmness of the law to realise it and there is also no specific evidence either supporting or rejecting it, but the *maslahah* is substantially in line or not contrary to the general instructions of sharia or the spirit of sharia or *maqasid sharia*.²⁴

A creation can be considered as *Haq Ibtikar* if it meets the criteria of originality, creativity, usefulness, and existence in a tangible form that can be

²² Fathi Ad-Duraini, *Al-Fiqh, Al-Islam Al-Muqaram* (Beirut: Muasanasah Al-Risalah, 1414).

²³ Wahbah Zuhaili, *Al-Fiqh, Al-Islami Wa Adilatuhu* (Beirut: Darul Alfikri, 1998).

²⁴ Al-Fikri, *al-Muamalah al-madiyah wa al-Adabiyah*, (Beirut: Dar al-Fikri).

recognised legally and socially. In the context of *Haq Ibtikar*, creations include not only material objects, but also intellectual works born from a person's thoughts, imagination, expertise, or innovation. Originality is a key requirement, where the creation must be the result of an unprecedented new thought or the development of an existing concept. Creativity is also an important element as it shows the aesthetic value, innovation, or function added to the creation.²⁵

2. Position of *Haq Ibtikar* as property

Everything that has value is considered valuable, and anyone who damages it is obliged to replace or bear the consequences. According to Imam Shafi'i, *Al-Mal* (property) is something that has value, can be traded, and creates responsibility for anyone who damages it. Based on this understanding, property is not only limited to physical or material objects, but also includes rights or benefits that can be valued as property. This is due to the fact that a person's ownership of something is not solely because of its form, but because of the benefits it provides.²⁶

The Fiqh scholars agree that a thinker (*mubtakir*) has the right to his thoughts which are recognised as material property rights. Based on the nature of property, *Ibtikar* can be traded or inherited if the owner dies, because it is in accordance with the characteristics of property in Islam. Thus, *Ibtikar* fulfils all the criteria of being property according to Islamic jurisprudence and has the same status as other types of property. Therefore, *Ibtikar* should receive the same legal protection as other rights.²⁷

However, Imam al-Qarafi (d. 684 AH/1285 CE), a Malikiyah jurist, said that *Haq Ibtikar* is a right for those who have it, but this right is not related to property, because its source is reason, and the results of reason in the form of thought are not material and can be inherited, bequeathed or sold. The majority of Maalikis oppose al-Qarafi's view, such as Ibn 'Urfah, who says that, although it is originally human intellect, *Haq Ibtikar* becomes very valuable, even more so than other assets once it is expressed in a medium.

²⁵ Iwandi, Efendi, dan Fahmi, "THE CONCEPT OF FRANCHISING IN THE INDONESIAN'S CIVIL LAW AND ISLAM."

²⁶ Rashid Sulaiman, *Islamic Jurisprudence*.

²⁷ Ahmad Luqman Hakim dan Irfa Munandar, "THE LEGALITY OF MURABAHAH CONTRACTS SYSTEM IN ISLAMIC FINANCING INSTITUTIONS: An Analysis of Muḥammad Bin Ṣāliḥ Al-Uṣaimīn's Thought," *JURISTA: Jurnal Hukum Dan Keadilan* 7, no. 1 (2023): 24–36, <https://doi.org/10.1234/jurista.v7i1.66>.

The author agrees with Ibn 'Urfah's view, because *Haq Ibtikar* that has been realised in a medium has a significant property value, often exceeding the value of other assets. In addition, property is not only limited to material forms, but also includes benefits. Therefore, copyrights or other works derived from human thought can be considered as property that has the same value and position as other physical objects.

The Haq of Ibtikar resides with its creator and is *mutaqarrar*. Therefore, the creator has authority over his work, which allows him to use and grant ownership rights to others. *Haq Ibtikar* is a right that is material, has a fixed position, and is of property value, which is related to *Haq Al-'Aini* (a material right that a person has directly over a property). *Haq Ibtikar* is categorised as *haq ainiy* because this right has a direct relationship between the creator and the product of his creation. Therefore, Islamic law highly values copyright.²⁸

3. Copyright in Indonesia

Copyright comes from countries that apply the *Common Law* legal system, where the term used is *copyright*. Meanwhile, in Germany copyright is known as *urheberrecht*, and in France it is called *droit d'auteur*. In the UK, the term *copyright* was originally created with the aim of protecting the interests of publishers, not the creators of works. However, along with technological and legal developments, this concept continues to undergo changes and adjustments Copyright is expanded to include not only the field of books, but in the fields of drama, art, music, computers and so on.²⁹

Literally, the term Copyright consists of two words, namely "right" and "copyright." According to the Big Indonesian Dictionary (KBBI), the word "right" refers to the authority given to a certain party, which can be used or not as desired. Meanwhile, "copyright" refers to human works created through reason, knowledge, feelings, experience, and imagination. Thus, Copyright can be understood as something that is directly related to the intellectual aspect of humans.³⁰

²⁸ Chuzaimah Hafiz Anshar, *Problematics of Law* (Jakarta: Pustaka Firdaus, 1997). 110

²⁹ Ending Purwaningsih, *Development of Intellectual Property Rights Law* (Jakarta: Ghalia Indonesia, 2005).

³⁰ Chairul Fahmi dan Wira Afrina, "ANALYSIS OF LEGAL ASPECTS ON DEBT TRANSFER FROM CONVENTIONAL BANK TO SHARIA BANK POST THE APPLICATION OF QANUN ACEH NO. 11 OF 2018," *Al-Mudharabah: Jurnal Ekonomi Dan Keuangan Syariah* 4, no. 1 (23 Juli 2023): 28–39.

Based on the understanding of Article 1 Paragraph (1) of Law No. 28 of 2014 Concerning Copyright, namely "Copyright is the exclusive right of the creator that arises automatically based on the declarative principle after a creation is realised in a tangible form without reducing restrictions in accordance with the provisions of laws and regulations". Explained in Article 4 of Law No.28 of 2014 concerning Copyright that. "Exclusive rights are rights that are used for creators so that no other party can utilise these rights unless they get permission from the creator. Copyright holders who are not creators only have part of the exclusive rights in the form of economic rights, which is meant by the declarative principle that a creation has received legal protection after being made, seen, heard and known by other parties.

There are two important elements that must be contained or contained in the formulation or terminology of Copyright, namely:

- a. A moral right that under no circumstances, and in no way, can be abandoned;
- b. Rights that can be transferred or assigned to another party (economic rights).

Law No. 28/2014 on Copyright defines creation as any work produced in the fields of science, art, and literature, which arises from inspiration, ability, thought, imagination, skill, or expertise, and is realised in a form that can be seen or felt. Regarding the types of protected works, this is explained in detail in Article 40 Paragraph (1) of Law Number 28 Year 2014. The types of protected creations can be divided into two groups, namely original creations and derivative creations. Original creations are creations that exist in their original form or shape as first created by the creator, without any change in form or transformation into a different form.

B. Forms of Copyright and its settlement of the similarity of the name and quality of the Bur'am Community

Komunitas Bur'am is a group that plays Rapai instruments from Banda Aceh. This community was established on 15 October 2011 and officially registered through a notary on 8 January 2016. The name "Bur'am" itself is an acronym for *Budaya Rapai Aceh Meusyeuhu*. It was founded by Khairil Anwar, Zulkifli, Chairullah Akbar, Indra Helmi, Ridha, and Harvan in Banda Aceh. Bur'am Community Banda Aceh is an art group that uses the Rapai instrument as the main element in every performance. Sitting in a circle, they wear all-

white clothes and black caps. The performance material presented is in the form of Acehese poems and da'wah messages. The poems used are inherited from the past which are rearranged into new works. In addition, Komunitas Bur'am also develops its creativity by combining Rapai beats with new verses that they create. This not only adds variety to the performance, but also enriches the repertoire of the group. This effort is a manifestation of their dedication to preserving Acehese culture.

The Banda Aceh Bur'am Community also developed in other regions. Banda Aceh Bur'am Community's distinctive rapai playing patterns were adopted by Bur'am Communities in other regions, including their performance presentation styles, materials, and verses. In the face of increasingly modern times, the Bur'am Community is not only active in Banda Aceh, but also has a presence in areas such as Bireuen, Meulaboh, and Yogyakarta. Bur'am Community's performances often receive a positive response from the community. Their interest in these performances has led to the spread of the Community's popularity through social media, making it increasingly recognised by a wide audience. The main attraction of the Bur'am Community lies in the uniqueness of its instruments and its meaningful poems. The poems contain religious messages, praise to Allah, and salawat to the Prophet, harmoniously arranged with rapai music accompaniment.³¹

Copyright as a form of legal protection of intellectual works plays an important role in protecting the name and quality of the Bur'am community. In this context, copyright protects the Bur'am name as a unique identity created by the founders in Banda Aceh. This form of protection includes the exclusive right to use, develop and manage the name, thus preventing others from using the same name without permission. Problems arise when other communities in different regions, such as Bireuen, Sabang and Yogyakarta, use the Bur'am name with similar characteristics and qualities, potentially creating confusion in the community regarding the community's origins.

The popularity of the Bur'am Community is not free from challenges, including issues related to the similarity of names and artistic quality between the original Community from Banda Aceh and other art communities that use the name "Bur'am." The head of the Bur'am Community, Zulkifli, expressed his concern about the community's perception of the origin and who actually

³¹ Aulia Rahman, Rida Safuan Selian, and Nurlaili, "The Existence of Bur'am Group Banda Aceh," *Scientific Journal of Students of Drama, Dance and Music Education Study Programme, Faculty of Teacher Training and Education, Syiah Kuala University* Volume VI (May 2021).

created the Community. These concerns were heightened when some members or even founders of the Banda Aceh Bur'am Community decided to split up and establish a new art community with the same name, "Bur'am."³²

The communities that emerged after the breakup of Banda Aceh's Bur'am Community not only used similar names, but also adopted almost identical concepts, performance styles and artistic approaches. This led to confusion in the community, especially regarding the authenticity and quality of Bur'am Community's art. Questions such as "Is this Community from Banda Aceh?" or "Who is the original founder of Bur'am?" have become frequent issues, undermining the clarity of the original Community's identity.

This dispute not only has the potential to damage the reputation of Banda Aceh's Bur'am Community but also obscures the contribution of the original founders in preserving Aceh's traditional arts. In the context of arts and culture, issues like this often affect a group's image, especially when people begin to find it difficult to distinguish between the original Community and those who simply take inspiration. Zulkifli's concerns are reasonable, given that the name Komunitas Bur'am has become an important part of Banda Aceh's cultural identity and represents its founders' concerted efforts to preserve authentic traditional arts.

To resolve this dispute, strategic steps need to be taken by Zulkifli and the founders of the Banda Aceh Bur'am Community. From a legal perspective, protection of the name "Bur'am" can begin by registering the name as a trademark or copyright with an official institution such as the Directorate General of Intellectual Property (DJKI). This step aims to give legal recognition to the name as the exclusive property of the Banda Aceh indigenous community. With clear legal protection, the name "Bur'am" cannot be used by other parties without official permission from the founder or Community representative.

In addition, a legal approach could include a mediation or arbitration process with parties using the name "Bur'am" without authorisation. In this process, Zulkifli and his team can explain the history and contributions of Banda Aceh's Bur'am Community and negotiate a mutually beneficial solution, such as changing the name of another Community or giving official recognition to the original Community. It is important to maintain good

³² Interview with Zulkifli, Chairman of Bur'am Community Banda Aceh, 4 January 2025

relations with other art communities who may not intend to infringe, but do not understand the importance of protecting the name.

From the non-legal side, Zulkifli and the founders can educate the public about the history and uniqueness of the Bur'am Community through various media. For example, they could publish official documentation covering the Community's journey from its inception to its current achievements. Through digital platforms such as social media, documentary videos, or online articles, the public can better understand that Komunitas Bur'am was first created in Banda Aceh by Khairil Anwar, Zulkifli, Indra Helmi, Ridha, and Harvan. In addition, organising cultural arts programmes involving the original Bur'am Community can also be a means to strengthen the Community's identity.

On the other hand, collaboration with other art communities inspired by Bur'am can be a positive strategy to build a wider network while emphasising the position of Bur'am Banda Aceh Community as the originator. Through this approach, the community can better recognise the value of authentic art and culture, without having to get caught up in the confusion between the original Community and other communities.

The resolution of this dispute was crucial to ensuring the authenticity and continuity of the Acehnese traditional arts represented by the Bur'am Community. With a combination of legal approaches and community education, Zulkifli and his team were able to protect the name and quality of the Community, and continue to contribute to the preservation of Acehnese culture amidst the challenges of modernisation. This is not only a strategic step in protecting the identity of the Bur'am Community, but also an example of how traditional arts can be preserved in the face of global cultural competition.

C. Legal certainty over the name rights of the Bur'am Music Community in Banda Aceh from the perspective of *Haq Ibtikar*

Haq Ibtikar, in the perspective of Islamic law, provides a basis that intellectual work is part of property that has value and must be protected, just like other property. In this context, the name of the Bur'am Music Community in Banda Aceh can be categorised as a result of creative thinking that has intellectual value. The name is not only the identity of the Community but also reflects the reputation, artistic quality, and cultural contributions that the founders have made. According to the principle of *Haq Ibtikar*, any intellectual work born from the thoughts and creativity of a person or group of people is

considered a material property right. The protection of the Bur'am name is therefore not only a positive legal necessity, but also a moral obligation to safeguard the rights of its creator from infringement or misuse by other parties.

In the case of Banda Aceh's Bur'am Music Community, legal certainty over the rights to the name is crucial to avoid public confusion and protect the Community's reputation. Based on the principle of *Haq Ibtikar*, the Community that first coined the name "Bur'am" and built an artistic concept around it has the exclusive right to the use of the name. As in Islamic law, a work is considered the property of the person or group that created it, and infringement of that right is considered a form of usurpation that must be stopped. Thus, in the context of the similarity of names between the Bur'am Music Community of Banda Aceh and other music communities that use similar names, the principle of *Haq Ibtikar* provides legitimacy that the rights to the name belong only to the original creators, namely the founders of Bur'am in Banda Aceh.

Similarities in names that occur in other music communities outside Banda Aceh, such as in Bireuen, Sabang and Yogyakarta, in *Haq Ibtikar*'s view, can be considered a violation of these exclusive rights if the use of the name Bur'am is done without permission or without giving recognition to the original community. Islamic law emphasises the importance of respect for property rights, including intellectual works. This offence not only impacts the reputation and identity of Banda Aceh's Bur'am Music Community, but also potentially undermines the authenticity and quality of the art they have built. In this context, the principle of *Haq Ibtikar* asserts that any action that harms the copyright or intellectual works of others must be dealt with fairly, either through positive legal processes or mediation mechanisms based on the values of justice.³³

According to the consequences of Islamic law, *Haq Ibtikar* is an absolute property right of a material nature granted to the creator or inventor for their work. When someone uses or utilises the material with the permission of the inventor or creator, they are entitled to its value. This right applies to the laws that encompass it, such as property. As such, *Haq Ibtikar* has the same standing as property ownership which can be inherited, bequeathed, or bequeathed. So

³³ Jarmanisa dkk., "ANALYSIS OF RISK COVERAGE AGREEMENT BETWEEN PT. J&T AND AN INSURANCE COMPANY FOR DELIVERY OF CONSUMER GOODS IN THE CONTEXT OF KAFALAH CONTRACT," *JURISTA: Jurnal Hukum Dan Keadilan* 5, no. 2 (1 Oktober 2021): 126-46, <https://doi.org/10.22373/jurista.v5i2.11>.

to maintain the existence of *Haq Ibtikar* from things that damage it must get legal protection from the government through regulations or laws by considering the benefits of both parties. The government's action to regulate *Haq Ibtikar* for its citizens is not contrary to the rules of Islamic law.³⁴

Legal certainty over the name of the Bur'am Music Community in Banda Aceh can be achieved through a positive legal approach applicable in Indonesia and the principle of *Haq Ibtikar* in Islamic law. In positive law, the name Bur'am as the identity of the traditional music community can be protected through intellectual property registration, such as copyright or trademark, as stipulated in Law Number 28 of 2014 concerning Copyright and Law Number 20 of 2016 concerning Trademarks and Geographical Indications. By registering the name Bur'am, this Community obtains exclusive rights to the use of the name, so that other parties who wish to use the name Bur'am must obtain permission first. This registration also provides a strong legal foundation in the event of a dispute, allowing the Community to file a claim with the Commercial Court or a mediation institution.

In the perspective of *Haq Ibtikar*, the name Bur'am is considered a product of creative thought that has property value and benefits. This principle recognises that the rights to intellectual works, including the name of the Community, belong to their creators and must be protected from misuse or infringement. In cases of name similarity with other Communities in Bireuen, Sabang, or Yogyakarta, *Haq Ibtikar* views that the use of the name without the permission of the original creator is a violation of that exclusive right. Islam affirms the importance of respecting copyright and prohibits actions that harm the owner of the work, so the Banda Aceh Bur'am group has legitimacy to protect their name and ensure its authenticity remains recognised.

Bur'am Music Community can be recognised as *Haq Ibtikar* in the perspective of Islamic law because it fulfils the elements of creativity, originality, and value of benefits that are the basis for recognition of intellectual property rights. This name is not just an identity, but also a cultural symbol that represents traditional Acehnese art and has provided extensive benefits, both in the preservation of art and inspiration for the community. In Islamic law, the name Bur'am has the same status as other property, including

³⁴ Chairul Fahmi, "Revitalisasi Penerapan Hukum Syariat Di Aceh (Kajian Terhadap UU No.11 Tahun 2006)," *Tsaqafah: Jurnal Peradaban Islam* 8, no. 2 (3 Mei 2016): 295–309, <https://doi.org/10.21111/tsaqafah.v8i2.27>.

the right to be protected from misuse or unauthorised use. This protection is necessary to honour the rights of the original creator, ensure the clarity of the name's origins, and preserve the value and reputation of the Acehese culture represented by this Community. By providing legal certainty to the name Bur'am, not only are the rights of the founders respected, but also Aceh's cultural heritage can be preserved and continue to thrive.

CONCLUSIONS

The dispute over the common name and quality of the Bur'am Music Community stems from the use of the name "Bur'am" by another community formed after a split among members of the original Community established in Banda Aceh. This triggered concerns from Zulkifli, one of the founders, about the community's perception of the Community's origins and original creators. The name Bur'am, which is an acronym for "Budaya Rapai Aceh Meusyeuhu," has become a symbol of Acehese traditional art that has inspired many art communities in areas such as Bireuen, Sabang, and Yogyakarta. Uncertainty regarding the identity of the Community may obscure the contributions of the original founders and damage the reputation of Aceh's cultural arts. The resolution of this dispute can be done through mediation, where the history of the formation of the Community and the roles of its founders are explained transparently. If mediation is unsuccessful, formal legal channels can be pursued by registering the name Bur'am as a trademark or copyright, so that the exclusive rights to this name receive clear legal protection. This step could also avoid potential similar conflicts in the future.

In *Haq Ibtikar's* perspective, the name Bur'am has all the characteristics that can be recognised as an intellectual right. The name is not only the result of the creativity and originality of its founders, but also has significant beneficial value as an identity of traditional Acehese art and culture. Islamic law recognises that rights to intellectual works such as these are equivalent to ownership of property that can be protected, inherited or sold. Therefore, legal protection of the Bur'am name is not only to honour the rights of the original creator, but also to preserve Acehese traditional arts as part of the nation's cultural wealth. By providing strong legal protection, the name Bur'am can remain an authentic representation of Acehese traditional art, strengthen its position in the art world, and maintain public trust in the authenticity and quality of this musical community.

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