

# Copyright Division in the Concept of Mawaris and Copyright Act No.28 Years 2014

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## Abstract

*Copyright is the right of Intellectual Property (right over the wealth of Intellectual). The right over the wealth of intellectual, is the right to enjoy economic result of some intellectual creativity. In the terms of copyright in Copyright Act No.28 year 2014 explained that "copyright is an exclusive right of the creator or the right recipient to announce or reproduce the creation or give permission for it without any reduce a limitations or restrictions according to the applicable law". In this case, copyright can be transfer to the inheritor or to the other parties. This research aims to know the division ordinances in inheritance in the concept of mawaris and copyright Act No.28 years 2014. This transfer is aims to respect the struggle, thought, creativity of the creator, and to keep the benefits felt by society and his inheritor. The finding of study are according to copyright act, the creation that get a copyright is all of creation in art and science that metioned in copyright act. In Islam not all of creation get a protection by copyright but it must to have some of requirements as pure, halal or legal, thayyib or good, and it doesn't damage a moral of society. The copyright division in inheritance is regulated in civil law book and mawaris concept. Takharruj system or mutual agreement system is allowed be use after the division in the concept of mawaris.*

**Keyword:** *Copyright, Mawaris, Intellectual property, Sharia*

## Introduction

Allah SWT created man with a nature of interdependence among each other. Thus each man was created with a blessed of reason that is endowed with all the skill and creativity of his live. With the advancement of technology and science in this age, the human needs will easily available in a manner which is more practical and helpful. However this new creation will not materialize for granted, but it's require some of knowladge, skills, creativity, ideas, and effort from the

creator. Then all the form of new creation must be appreciated with the rights of creator over the protection of copyright or the protection of his property.

In the copyright Acts No.28 years 2014 article 1 point 1 explained that “Copyright is the exclusive right arises automatically base on declarative principle after a creation manifested in tangible form without less any restriction in accordance with the provisions of the law”.<sup>1</sup> From this terms, copyright is a wealth right of someone that was protected, because a creator would get a royalty from his creation that will be one of his property or asset of his life.

The acquisition of the copyright protection can be obtained by registering the creation, but unregistered creation also will also get a protection, but it will be more difficult because it requires an investigation of the authenticity of the ownership.

When a creator dies, then the copyright or property right will be transfer to others, especially his inheritor by donate, testament, bequest, or inheritance, and written agreement.<sup>2</sup> This transfer is a very important thing which is intended to maintain, protect, and kept the benefit of the creation felt by society and the economic benefit felt by his inheritor and to respect the result of the creation, that have be obtained from the science, creativity, skill, and the time of the creator after the creator was death.

## Understanding of copyright

Copyright is the right of Intellectual Property. Intellectual property is the right that was appear from the result of some creativity. Copyright Acts in Indonesia has been there since 1982 which is national Acts, and now has been adapted to the TRIPs (Trade Related Aspects Of Intellectual Property Rights) or the aspect of Intellectual property rights that related to the trade, because Indonesia had joined to signed Uruguay Round Agreements for established the World Trade Oragnization.<sup>3</sup>

In Indonesia Copyright Acts has been changed for several times, first is Acts No.6 years 1982 then converted to Acts No.7 years 1987 which was converted to Acts No.12 years 1997 and converted to Acts No.19 year 2002 and the last is converted to Acts No.28 years 2014 aboaut Copyright.<sup>4</sup> The changes

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<sup>1</sup> UUHC No.28 Tahun 2014, pasal 1 (1)

<sup>2</sup> Ibid, pasal 16 (2)

<sup>3</sup> Samiran Jerry, *Peralihan Hak Cipta Dengan Cara Pewarisan Menurut UU No.19 tahun 2002 Jo UU No.28 tahun 2014*, (jurnal lex privatum, Vol.IV, No.2), page. 6

<sup>4</sup> Maryam Lily, *Peralihan Hak Cipta Melalui Pewarisan Menurut UU No.28 Tahun 2014 Tentang Hak Cipta*, (Jurnal ilmiah, dunia ilmu, Vol.2, No.24), page.24

of these Acts is the effort of the government to do some improving in the creation protections of someone that has a benefits for the society.

In the copyright Acts No.28 years 2014 article 1 point 1 explained that “Copyright is the exclusive right arises automatically base on declarative principle after a creation manifested in tangible form without less any restriction in accordance with the provisions of the law”.<sup>5</sup> The exclusive rights are special rights for the creator or the rights holder, that are not allowed to the other parties to use that rights without any permission from the creator.

As for protected creation according to Copyright Act No.28 Years 2014, as follows:

A protected creation are over the creation of science, art that contain a follows thing:

- a. Books, pamphlets, and all other papers;
- b. Religion lecture, lectures. Speeches and other similar creation;
- c. Props made for education and science;
- d. Song or music with or without text;
- e. Drama or drama musical, dance, choreography, puppet, and pantomime;
- f. Art in all form such as painting, drawing, sculpture, calligraphy, carving;
- g. Applied arts;
- h. Architecture;
- i. Map;
- j. Batik works art or other motif of arts;
- k. Photography;
- l. Portrait;
- m. Cinematography;
- n. Translate, *tafsir*, flowers bucket, basis data, adaptation, arrangement, modification, and other creation from transformation<sup>6</sup>

Cause the character of the creation is private and corporate with the creator, then a private rights cannot be seized from him, cause copyrights cannot be transfered orally but must be authentically. As the character of copyright according to saidin thought as below :Copyright are immaterial moving objects, Copyright can be divide (divisible), Copyright cannot be seized<sup>7</sup>

Copyright will exist after we registered our creation to the formal legal entity. The procedure of copyright registration are as below:

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<sup>5</sup> UUHC pasal 1 (1)

<sup>6</sup> Ibid, pasal 40 (1)

<sup>7</sup> Maryam lily, hal.27

- a. To register the creation to the regional office of department of law and human rights.
- b. To register the creation by daring or online on the legal site <https://e-hak-cipta.dgip.go.id>.
- c. To register the creation by consultant of intellectual property services.<sup>8</sup>

The requirements of copyright registration that must be fulfill as below:

- a. Name, citizenship status, and full address of the registrant.
- b. Name, citizenship status, and full address of copyright holder.
- c. Title of creation.
- d. Time and location of creation had been announced for the first time.
- e. The short description of creation.
- f. Sample of a registered creation<sup>9</sup>

After the creation had been registered, then the creation is protected by copyright and the creator has an exclusive right of it. After the creator or the owner of copyright has die this copyright can be the transfer to another parties or be inherit to the inheritor.

The exclusive right for the creator are divided to two rights, first is economic rights, and the second is moral rights.

- a. economic rights, these rights can be seen when a creator or the holder of copyrights reproduce his creation then sold on the market, then he get a material benefits from the reproducing of that copyrights. Similary, in giving permission to another parties to reproduce or to sell the copy of his creation
- b. moral rights is the rights to recognizing his creation, it's the rights which a creator published as the creator of creation with a purpose may not the other parties announce the work of his creation.<sup>10</sup>

Copyright protection last along the enactment of the copyright, as already provided in the copyrights Acts in article 58 about the enactment of the copyright of the creation, they are as below:

1. The Copyright implement during the life of the creator and continues till 70 years after the die of the creator.

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<sup>8</sup> *Prosedur Pendaftaran Hak Cipta Di Indonesia*, [www.bplawyers.com](http://www.bplawyers.com), diakses 17/05/2018,pukul 12.00 WIB

<sup>9</sup> *Ibid*,

<sup>10</sup> *Panjaitan Bernat, Pewarisan Hak Cipta Menurut Kuhper Undang-Undang No.28 Tahun 2014 Tentang Hak Cipta*, Jurnal ilmiah advokasi Vol.1, No.2, hal.2

2. The Copyright that owned by 2 or more people, the copyright it's apply during the life of the creator who died most recently and continues till 70 years after it.
3. The protected copyright and owned by legal entities, it's apply along 50 years from the first time the creation was announced.

### Copyright in Islam

Copyright has been known at the Islamic caliphate. At the time of the Islamic caliphate, has a firm action from the judges and the chaliphate to the poets who has acknowldage the creation of other poets.<sup>11</sup>

Rights in Islam has a several meanings, as below:

- a. Ownership, possession, authority, power to do according to the law.
- b. Wealth, means something that can be owned, transferred, purchased, or sold.
- c. Intellectual Property, means wealth over all of the production, intelligence power thought, such as technology, knowledge, art, dealership, songs, paper, caricatures.<sup>12</sup>

The copyright in Islam contemporary is known as "*haq al-ibtikari*". These word is composed of two words, they are "*haq*" and "*al-ibtikar*". The meaning of "*haq*" is specificity possessed someone over a thing. The word "*ibtikar*" derived from arabic language it's *mashdar* from "*ibtakara*" the mean is "created".<sup>13</sup>

According to terminology, *haq Al-ibtikar* is a special right over the first creation. This definition is not different with the definition in the terms of etymology. Fathi Al-Duraini has been defined with :

الصور الفكرية التي تفتقت عنها الملكة الراسخة في النفس العالم أو الاديب  
ونحوه مما يكون قد أبدعه هو ولم يسبقه إليه أحد<sup>١٤</sup>

*"The work of thought produced by the scientist through his thought and his analysis, a result is the first creation that has not been expressed by previously scientist".*

In a copyright there are two rights, there are *haq al-iqtishadi* (economic

<sup>11</sup> *Konsep Hak cipta dalam hukum islam*, www.idr.uin-antasari.ac.id,page.80

<sup>12</sup> ١٢ (وجه زعملي، الفقه الإسلامي وأدلته: ٤)، دمشق، دار الفكر: (٤٨٩١، ص ٢٦٨٢)

<sup>13</sup> Munawwir dictionary, Munawwir,page.101

<sup>14</sup> ٤ (فتح الدرر، حق الابتكار في الفقه الإسلامي المقارن، ) بيروت، طباعة مؤسسة الرسالة، ١٨٩١ م (ص: ٩)

rights) and *haq al-adabi* (moral rights).<sup>15</sup> The economic right aims to show that each creator has a full power of his creation. As for the moral right in Islam is a responsibility of each creator, this has long been a part of the science in Islam.

Islam said, that a man who work with carrying a firewood on his back it's better than who be a beggar, then it's necessary for a muslims to look for a sustenance by a various ways such as farming, writing a paper, manufacture, or work by another variety of jobs those not fobidd in the religion.<sup>16</sup> Thus, creat some creation is include in a allowed things in Islam in search of sustenance, along this thing no prohibited items of shari'a with the intention of worship to Allah.

In Islam, copyright is also recognized as a protected right and can be used as an objects in succession. There are several opinions of scholars about copyright, there are some of scholars group who had forbid a copyrights:<sup>17</sup>

- a. Making some of work or write the science is the same case with spread of knowledge, and spread of knowledge is an obligation, then there is no some of award for an obligation.
- b. Limiting the access of scientific works with copyrights except with some permission, pay for it and other kind of this form in hiding the science or *kitman 'ilm* that's forbidden in Islamic sharia. As in these prophetic tradition said :

مَنْ سَأَلَ عَنْ عِلْمٍ فَكَتَمَهُ اللَّهُ بَلَغَ مِنْ نَارِ يَوْمِ الْقِيَامَةِ

*This hadith explain, who asked some of news or knowledge he know but doesn't answer because he doesn't want to say a true news or knowledge, he will get punish in the last day with a fire bridle.<sup>18</sup>*

As for the evidence for a scholars group that allowed copyrights as follow:

- a. Also in hadith :

إِنَّ أَحَقَّ مَا أَخَذْتُمْ عَلَيْهِ أَجْرًا كِتَابُ اللَّهِ

<sup>15</sup> Agus Suryana, *Hak Cipta Dalam Islam*, Al-Maslahah jurnal hukum dan pranata social, hal. 251 Haq al-iqtishadi : the right of the creator to get a material thing from his work.

Haq al-adabi : the creator responsibility among his creation, such as the right to list his name on his creation or when his part of his work taken by other parties.

١٦ يوسف القرضاوي, حلال والحرام في الإسلام, كتب الإسلام, بيروت: ٢٠٠٩ م. (ص: ٤٢١)

<sup>17</sup> Ahmad zarkasih, *Hak Cipta Dalam Pandangan Syariah*, Diakses dari situs [http:// www.rumahfiqih.com/fikrah](http://www.rumahfiqih.com/fikrah), 15 februari 2018, 20.00 WIB

١٨ أبو سليمان حمد بن محمد بن إبراهيم بن الخطاب البستي المعروف بالخطابي, معالم السنن, وهو شرح سنن أبي داود, ( المطبعة العلمية - حلب, ٢٣٩١ م. (ص: ٥٨١)

“Surely, the most worthy for you is take the rewards from this books” (narrated by Al-Bukhari)

If anyone can take some of rewards from Al-Qur’an, then take a rewards of what was Contain in Al-Qur’an is allowed. <sup>19</sup>Science that was poured into a works derived from Qur’an, it’s allowed to take a rewards from it because it has a benefits.

- b. A scientific paper or a scientific works is a benefit that can enjoyed for public interest. The ‘*ulama* of four scholars agreed that something that has a benefits it has a value of that matter, with a proof that our prophet married someone with memorizing Qur’an be a dowry of it.
- c. Executed the intellectual works is a work of the brain and some of hand made. And our prophet greatly appreciate a work that resulting from their own hand, and he state that it was a good income. As in the following hadith:

قِيلَ يَا رَسُولَ اللَّهِ أَيُّ الْكَسْبِ أَطْيَبُ قَالَ عَمَلُ الرَّجُلِ بِيَدِهِ

وَكُلُّ بَيْعٍ مَبْرُورٍ

- d. There are an interest was born out of a copyright, that motivate the other scientists to continuing in works.
- e. As a method of *fiqh daf’u mafsadah muqoddam ‘ala jalbi masholih* insist the present of copyright.
- f. Accordance to the method *الخارج بالضمان* (who have a struggle would produce and get something of what he has done).

In Islam not all of creation protected by copyright, but it must to have the requirements as follows:

- a. Pure, all of creation that recognize in Islam it must be pure and not contain a stool.
- b. Allowed or *halal*.
- c. *Thayyib* or good, it must be a good thing in the human life, it can be a thing to be use in our works.<sup>20</sup>

<sup>19</sup> ابن بطال أبو الحسن علي بن خلف بن عبد الملك، أبو تميم ياسر بن إبراهيم، شرح صحيح البخاري لابن بطال، (الرياض، دار النشر: مكتبة الرشد، السعودية:

<sup>20</sup> Agus suryana, page.260

## Understanding of Mawaris

Inheritance is the grant of right from the successor to the inheritor as the recipient of right that has a relationship cause a marriage, or relationship of blood caused by death.<sup>21</sup>

there a few people who are considered unmorthy of being the inheritor and not allowed to get the heir of the relic treasure. This was regulated in *mawaris*:

The people who are considered unworthy for being a inheritor, and thus may not get the inheritance are : A slavery, Who has been sentenced because killing or try to kill the people who death, A different religion. A moslem was not inherit a pagan, and a pagan was not inherit a moslem.<sup>22</sup>

Then, for the people who has mentioned in the article above, are not entitled to get any of the property of the heir and he had to return all the result from the benefit since the beginning of the legacy transferred.

In *fiqh mawaris*, we can find the division system of inheritance to recipient of right according to Islamic law. In the science of faraidh told the way for calculate and count a part of each inheritor, then each of them will get his part such as his portions.

The multiple items in the heir that must be understandable, there are:

- a. The successor (*mumarist*) is a person who has a property and will be inherited by the other (the inheritor) after he has die.
- b. The beneficiary/inheritor (*warist*) is a person who is entitled to get a legacy due to several reason as kinship, marriage, and other.
- c. Legacy (*maurusi*) is a thing left out by a people who has die, either in wealth or property.<sup>23</sup>

The terms of inheritance is some of thing that must be filled before the division of the inheritance did are: The successor has died, The life of the inheritor or beneficiary, There is no obstruction in inheritance<sup>24</sup>

As for the relationship that cause to receiving the legacy are: A family relation as parents, children, siblings, aunt, uncle, etc, The relation cause the marriage covenant, the husband and wife, *Wala* is a family relation cause a

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٢١ سيد سابق، فقه السنة، بيروت - لبنان، دار الكتاب العربي، الطبعة: الثالثة، ٧٧٩١ م (ص: ٧٠٦).

٢٢ فقه السنة، ص: ٨٠٢

٢٣ علي الصيوني، مواريث في شريعة الإسلام، دار القلم، دمشق: ٣٩٩١، ص: ٩٣

٢٤ فقه السنة، ص: ٧٠٢



liberation of a master to the slave.<sup>25</sup>

As for the various of heirs or inheritor in Islam described in Compilation of Islamic law, as follows: *Dzawil furudh* are the inheritor are has specified division in Qur'an and hadith. *Ashabah* is the inheritor or the heir who has the remainder of estate or succession after the distribution to the all inheritor of *dzawil furudh*, *Mawali* is a changer inheritor.<sup>26</sup>

### Copyright Division in Mawaris Concept

Copyright exist cause some of new creation. The copyright is a value of creator thought, and works. In the Islamic view, copyright has a benefits, as our prophet said in hadith:

فَقَالَ رَسُولُ اللَّهِ صَلَّى اللَّهُ عَلَيْهِ وَسَلَّمَ: «مَنْ سَنَّ سُنَّةً حَسَنَةً كَانَ لَهُ أَجْرُهَا وَمِثْلُ أَجْرٍ مَنْ عَمِلَ بِهَا مِنْ غَيْرِ أَنْ يَنْتَقِصَ مِنْ أَجُورِهِمْ شَيْئًا، وَمَنْ سَنَّ سُنَّةً سَيِّئَةً كَانَ عَلَيْهِ وِزْرُهَا وَوِزْرُ مَنْ عَمِلَ بِهَا مِنْ غَيْرِ أَنْ يَنْتَقِصَ مِنْ أُوزَارِهِمْ شَيْئًا»<sup>٢٧</sup>

This hadith explain, who do good works will get a reward from Allah, and who do a bad works will get a sin. If we implement this works ever, which it not discontinue cause a death, but keep an impact and benefits endless after the creator death. For this purpose, Islam has allow a copyright be the inheritance objects.

Copyright is an intangible moving objects that can be transferred or switch to another party after the creator has death. Copyright include in *haq Maliyah* since these rights associated with property or ownership.<sup>28</sup> Copyright include in *milk al-ain attammah* it's mean where the owner of rights has the freedom to use and charge the result and perform some actions over his objects suit his will during his will is not contrary to the sharia.

Then, copyright can be transfer by inheritance because it has a great benefits for the society and his inheritor, and everything that has a benefits in public tradition be a wealth. The inheritance of copyright in the aims to keep the benefits felt by society and the economic benefits felt by his inheritor.

٢٥ احمد بن يوسف بن محمد الأهدال, بداية علم الفرائض, ( بيروت, دار طوق النجاة, الطبعة الرابعة: ٢٠٠٢م), ص: ٠٢.

<sup>26</sup> Kompilasi Hukum Islam, Pasal.185

٢٧ محمد بن صالح بن محمد العاتيمين, شرح رياض الصالحين, (الرياض, دار الوطن للنشر, ١٤٢٤هـ), ص: ٤٤٣

٢٨ وهبة الزحيلي, ص: ٥١

The copyright division by inheritance according to Islam is known with *mawaris* method and *takharrij* method. The copyright division in Islam can to divide among each inheritor as *mawaris* science based on Al-Qur'an and hadith. But, we can to use *takharrij* concept based on mutual agreement among inheritor after the division in *mawaris* concept.

The first, copyright division is according to *mawaris* concept. The inheritor may take an economic right of the creation, as take a royalty of it and add with all heritage so the result of it be divide among each other according to the *mawaris* concept or based on Al-Qur'an and hadith.

As for the portion of each inheritor, we can find it out in Al-Qur'an and hadith or in compilation Islamic law. As for an inheritor portion in Qur'an as follows:

يُوصِيكُمُ اللَّهُ فِي أَوْلَادِكُمْ لِلذَّكَرِ مِثْلُ حَظِّ الْأُنثَيَيْنِ فَإِنْ كُنَّ نِسَاءً فَوْقَ اثْنَتَيْنِ فَلَهُنَّ ثُلُثَا مَا تَرَكَ وَإِنْ كَانَتْ وَاحِدَةً فَلَهَا النِّصْفُ وَلَا بُوَيْهَ لِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ مِمَّا تَرَكَ إِنْ كَانَ لَهُ وَلَدٌ فَإِنْ لَمْ يَكُنْ لَهُ وَلَدٌ وَوَرِثَهُ أَبَوَاهُ فَلِأُمِّهِ الثُّلُثُ فَإِنْ كَانَ لَهُ إِخْوَةٌ فَلِأُمِّهِ السُّدُسُ مِنْ بَعْدِ وَصِيَّةٍ يُوصِي بِهَا أَوْ دَيْنِ آبَاؤُكُمْ وَأَبْنَاؤُكُمْ لَا تَدْرُونَ أَيُّهُمْ أَقْرَبُ لَكُمْ نَفَعًا فَرِيضَةٌ مِنَ اللَّهِ إِنْ اللَّهُ كَانَ عَلِيمًا حَكِيمًا<sup>29</sup>

وَلَكُمْ نِصْفُ مَا تَرَكَ أَزْوَاجُكُمْ إِنْ لَمْ يَكُنْ لَهُنَّ وَلَدٌ فَإِنْ كَانَ لَهُنَّ وَلَدٌ فَلَكُمْ الرُّبْعُ مِمَّا تَرَكَنَّ مِنْ بَعْدِ وَصِيَّةٍ يُوصِينَ بِهَا أَوْ دَيْنٍ وَلَهُنَّ الرُّبْعُ مِمَّا تَرَكَتُمْ إِنْ لَمْ يَكُنْ لَكُمْ وَلَدٌ فَإِنْ كَانَ لَكُمْ وَلَدٌ فَلَهُنَّ الثُّمُنُ مِمَّا تَرَكَتُمْ مِنْ بَعْدِ وَصِيَّةٍ تُوصُونَ بِهَا أَوْ دَيْنٍ وَإِنْ كَانَ رَجُلٌ يُورَثُ كَلَالَةً أَوْ امْرَأَةً وَلَهُ أَخٌ أَوْ أُخْتٌ فَلِكُلِّ وَاحِدٍ مِنْهُمَا السُّدُسُ فَإِنْ كَانُوا أَكْثَرَ مِنْ ذَلِكَ فَهُمْ شُرَكَاءُ فِي الثُّلُثِ مِنْ بَعْدِ وَصِيَّةٍ يُوصَى بِهَا أَوْ دَيْنٍ غَيْرِ مُضَارٍّ وَصِيَّةً مِنَ اللَّهِ وَاللَّهُ عَلِيمٌ حَلِيمٌ<sup>30</sup>

The example:

Goe Soe Loet has die, he has three daughters and four sons. He has a value of heritage about Rp.150.000.000.000 and copyright. The amount of the dead care is Rp.1.500.000. For this inheritance division, we may calculate the

<sup>29</sup> Qur'an, annisa':11

<sup>30</sup> Qur'an, annisa':12

value of copyright royalty.<sup>31</sup>

Copyright royalty: in this case, the inheritor sell the economic right to the another parties to take a royalty of it. The copyright royalty about Rp.150.000.000.000.

$$\begin{aligned}
 \text{All heritage} &= \text{heritage} + \text{copyright royalty} - \text{amount of the dead care} \\
 &= 150.000.000.000 + 150.000.000.000 \\
 &= 300.000.000.000 - 1.500.000 \\
 &= 299.998.500.000
 \end{aligned}$$

**Table of Copyright Division in Mawaris Concept**

<b>Heritage</b>	<b>Rp 300,000,000,000</b>
<b>Care of the death</b>	<b>Rp 1,500,000</b>
<b>Total of heritage</b>	<b>Rp 299.998.500.000</b>
<b>The root of subject</b>	<b>11</b>

<b>Inheritor</b>	<b>Portion</b>	<b>Divide</b>	<b>Value portion each ineritor</b>
<b>3 daughters</b>	<b>(1:1)</b>	<b>3\11</b>	<b>Rp 27,272,590,909</b>
<b>4 sons</b>	<b>(2:1)</b>	<b>8\11</b>	<b>Rp 54,545,181,818</b>

The second, Islam is allow to divide the heritage by taking a counsel between the inheritor if there any conflict among the inheritor. In the mawaris concept we recognize this way by *at-takbaruj*. *At-takbaruj* is one of wealth division system based on conference or taking counsel between the inheritor, as one of inheritor is deviate from inheritance and does not take his portion, or he drop his right in inheritance.<sup>32</sup>

*At-takbaruj* is allowed in Islam after the division in *mawaris* concept. There is no true evidence from Qur’an or hadith explain about this division system, but this system based on ulama jurisprudence of some encounter in caliphate Usman bin Affan as follow:

<sup>31</sup> Direktori Putusan Mahkamah Agung RI, No.191/pdt.g/2014/PN.sby

٣٢ علي الصابوني، ص: ١٧١

وقد روي عن ابن عباس رضي الله عنهما اجازته للتخارج بين أهل الميراث فيما بينهم بطريق التصالح. كما روي ان عبد الرحمن بن عوف طلق امرأته تماضر بنت الأصبع الكلبية في مرض موته، ثم مات وهي في العدة فورثها عثمان رضي الله عنه مع ثلاثة نسوة، فصالحوها عن ربع الثمن ثلاثة وثمانين ألف درهم.<sup>33</sup>

The division method in *takbarruj* system is as follows:<sup>34</sup>

1. We may recognize the root subject, so we may discard the portion of inheritor who has deviate from inheritance as he receive his portion, so divide the esidue of heritage between the other inheritor. Then, the mount of esidue portion is a root of subject. Example: A man has die and he has a father, daughter, and wife. While, this man has a house, and money among forty two million rupiah. So, his wife tell that herself just take a house and will discard her right in receiving an inheritance. In this case, the money just given to the daughter and the father, so the portion of both be a root of subject.

The root of subject from 24 we take the wife portion is 1/8 from 24 is three. The esidue is  $24 - 3 = 21$  it be a root of subject for his father and daughter and the value from this root subject be the portion of a father and daughter.

#### Table copyright division in Takharruj

the value each portion	42.000 : 21	2.000.000
the daughter portion	12 x 2.000.000	24.000.000
the father portion	9 x 2.000.000	18.000.000
<b>Total</b>	<b>24.000.000 + 18.000.000 = 42.000.000</b>	

2. If one of inheritor deviate his right and give it to the one of other inheritor, then the division by giving his portion to the recipient. Example : A man has die and he has a wife, daughter, and two sons. So, his daughter is deviate from inheritance and give her right to one of his brother with the ransom that be agreement between them. With this case, that inheritance

<sup>33</sup>Achmad Yani, S.T,M.Kom, **Faraidh dan mawaris**, (Kencana press, Jakarta:2016), hal.111

<sup>34</sup> علي الصابوني، ص: ٢٧١

or the portion just give to the wife and the two sons, while the portion of the daughter gave to the one of his brother who receive the right of it.

the root subject (8)		<i>tashib</i> (40)	40
Wife	1	5	5
son ( <i>ashabah</i> )		14	14
son ( <i>ashobah</i> )	7	14	14+7
daughter ( <i>ashobah</i> )		7	-

**Table copyright division in *takbarruj*<sup>35</sup>**

In this case, they can divide their copyright inheritance by this *takbarruj* system or the peace system. They can divide the royalty among each other as their agreement, or they can use the copyright by alternately. This division system is allowed in Islam after a division in *mawaris* concept along these division over their agreement, with their faith and sincerity without any force from other parties.

### Copyright Division in Copyright Act No.28 Years 2014

In the copyright transferring, the things that can be transferred or be routed is only the economic rights, whereas the moral rights is remain in the creator self.<sup>36</sup> The moral rights can only be transferred with the wills or other reason accordance with the provisions of the legislation after the creator has die.<sup>37</sup>

There is no a definitely ordinance or a concept in the copyright transferring by inheritance in Copyright Act No.28 Years 2014. As for the copyright transferring by inheritance, it can be divided to his inheritor according to the *Bugeerlijk weetboek* or civil law books. . In civil law books there are two kinds of inheritance system, there are:

1. Inheritance system *Ab Intestato* (inheritance by the law/ cause of death/ without a will).
  - a. The first group is, consist of husband/wife, and inheritor's children with his descendants from the children. The articles that regulated this first group are article 852,852 a paragraph (1), and article 852

٣٥ علي الصابوني، ص: ٢٧١

<sup>36</sup> Op.cit, Samiran jerry fransiskus, *Peralihan Hak Cipta Dengan Cara Penawisan Menurut UU No.19 Tabun 2002 Jo UU No.28 Tabun 2014*, jurnal lex privatum, Vol.IV, No.2, page.8

<sup>37</sup> UUHC,pasal 5(2)

- paragraph (2) of the civil law books.
- b. The second group, is consist of mother and father, or one of mother or father, with their brother/sister and their descendants. The article that regulated this second group are article 854, 855, 856, 857 of civil law books.
  - c. The third group, is consist of grandfather, grandmother and so on, and their families in a straight upwards line, either in the line of father or the line of mother. The article that regulated these group are, the article 855, 853, 858 of civil law books.
  - d. The fourth group, is consist of a families from a parents with their descendants till the sixth degree. This an inheritor group included in the sense of siblings in the further diverged line. The articles that regulated these group are, the article 850, 858, 861 of civil law books.
2. The inheritance system according to a will (testament). Inheritance through a will letters had explained in civil law books in the article 875.

The explanation of the article above, it can be inferred that the inheritor who entitled to precedence in receiving the inheritance are the first group, such as the children and the wife or husband who live longest. If the first group are not found, then continued to the second group, third, and fourth group. If they are not found also till the fourth group, then all of the relics treasure will belonging to the state.

As for the copyright position after inherited to the inheritor, then the copyright position still recognized and protected by the state and the law. The existence of copyright protection after the copyright transferring by the legislation aimed to keep the royalty or the profit for the creator families or his inheritor by reproduce or copy the creation.<sup>38</sup>

## Conclusion

Copyright division in Islam according to *mawaris* concept based on Al-Qur'an and hadith. If we find a conflict between an inheritor after the division in *mawaris* concept, we can use *At-takharruj* concept based on agreement and sincerity of the inhiretor. Copyright division according to Copyright Act No.28 Years 2014 based on civil law. The inheritance division according to civil law divide to *Ab Intestato* system and will or statement.

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<sup>38</sup> Irwan Dwi Harjo, *Perbandingan Pengalihan Hak Cipta Secara Kepada Ahli Waris Secara Penawisan Menurut Kuhperdata Dan Menurut UUHC*, Universitas Sumatra Utara, (page.4

The similarities and difference of copyright in *mawaris* concept and copyright act No.28 years 2014 as below:

- a. The similarity of copyright division in *mawaris* concept and Copyright Act No.28 years 2014 is copyright an intangible moving objects and propriety right that can transfer to the inheritor or to another parties.
  - a) The difference of copyright division in *mawaris* concept and Copyright Act No.28 years 2014 is: Copyright division in *mawaris* concept based on Al-Qur'an and hadith. The inheritor portion in *mawaris* concept regulated in Al-Qur'an surah An-nisa: 11-12. A copyright division in *mawaris* concept is efficient and honest because each person had their portion well. Copyright division according to Copyright Act No.28 Years 2014 is regulated in the article 852-861 of civil law. A copyright division in Copyright Act No.28 Years 2014 is divide in four inheritor group.

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