



AL-AFKAR: Journal for Islamic Studies

Vol. 6 No. 3 (2023). P-ISSN : 2614-4883; E-ISSN : 2614-4905

Journal website: <https://al-afkar.com>

Research Article

Implementation And Effectiveness of Copyright In Law No. 28 of 2014 And MUI Fatwa No. 5 of 2005

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Received : March 19, 2023

Revised : April 17, 2023

Accepted : May 20, 2023

Available online : July 25, 2023

How to Cite: Aminudin Ma'ruf, Muhammad Faisal Hamdi, Rashifahunnisa' Mellinia and Imron Rosyadi (2023) "Implementation And Effectiveness of Copyright In Law No. 28 of 2014 And MUI Fatwa No. 5 of 2005", *al-Afkar, Journal For Islamic Studies*, 6(3), pp. 846–859. doi: 10.31943/afkarjournal.v6i3.462.

Abstract. The development of Islamic literacy in Indonesia shows the capability of the nation in competing with other Muslim nations. However, copyright is often neglected by many parties. The study aims to assess the implementation and effectiveness of the copyright in law No. 24 of 2014 and MUI Fatwa No. 5 of 2005. A qualitative methodology has been conducted with the approach of literature and field study. The data was obtained through interviews and observations with 3 academic authors and 9 non-academic authors. The results of the study indicate that the majority of the academic authors argue that there is a lack of enforcement and impact in the law and fatwa. Similarly, the other authors carry the same opinion with some highlights on its effectiveness. The paper suggests that policymakers intensify the implementation and effectiveness of copyright law and fatwa in Indonesia. The enforcement of the law and fatwa will lead to the prosperity of authors and lead to a

knowledgeable society. The study keenly expects future studies in the field to cover more samples with different methodologies.

Keywords: Copyright, Law, Fatwa, Effectivity, Indonesia.

Abstrak. Perkembangan literasi Islam di Indonesia menunjukkan kemampuan bangsa dalam bersaing dengan negara-negara Muslim lainnya. Namun, hak cipta seringkali diabaikan oleh banyak pihak. Kajian ini bertujuan untuk mengkaji implementasi dan efektifitas hak cipta dalam UU No. 24 Tahun 2014 dan Fatwa MUI No. 5 Tahun 2005. Metodologi kualitatif dilakukan dengan pendekatan studi pustaka dan studi lapangan. Data diperoleh melalui wawancara dan observasi dengan 3 penulis akademik dan 9 penulis non akademik. Hasil kajian menunjukkan bahwa mayoritas penulis akademisi berpendapat bahwa penegakan hukum dan fatwa masih kurang. Demikian pula, penulis lain memiliki pendapat yang sama dengan beberapa sorotan tentang keefektifannya. Penelitian ini menyarankan agar pemerintah mengintensifkan implementasi dan efektivitas hukum dan fatwa hak cipta di Indonesia. Penegakan hukum dan fatwa tersebut akan membawa pada kesejahteraan pencipta dan menuju masyarakat yang berilmu. Studi ini sangat mengharapkan studi masa depan di dalam masalah hak cipta dengan mencakup lebih banyak sampel dengan metodologi yang berbeda.

Kata kunci: Hak Cipta, Hukum, Fatwa, Efektivitas, Indonesia.

INTRODUCTION

Indonesia is a Country of Law and at the same time a very plural country, not only about culture and ethnicity but a number of laws such as; customary law, state law and Islamic law (Runtoko, 2021). All of that resulted in different legal consequences. Islamic law in the Qur'an is called *sharia*, *fiqh* and the law of Allah. The most populous of religion in Indonesia is Islam. Islamic law has its own legal cause and effect. The existence of MUI (Indonesian Ulema Council) fatwas has regulated everything on Muslim-related in Indonesia (Absori et al., 2016). Although they have different positions, many MUI fatwas have been adopted into law in Indonesia, such as the Religious Justice Law, the Law on Halal Food, and the Law on the Sharia Economy (Habibaty, 2017).

Development of Indonesian educational system has witnessed several changes since the Dutch Colonial Education System until the Reform Education System (M. Wahib MH et al., 2022). The Indonesian educational system is supported by the Law of the Republic of Indonesia No.20 of 2003 (Rembangsupu et al., 2022). Apart from it, the idea of Islamization of Knowledge has been spreading in Muslim countries such as Indonesia and is believed as one of solutions for modern educational system in integrating science and religion (Nasution & Holid, 2023).

Intellectual property rights are deemed as material rights, namely the right to something that comes from the brain's work to think or the result of reasoning ratio work (Musyafa, 2015). The problem of intellectual property rights is among the legal object for Islam. MUI has issued fatwas on intellectual property rights, first fatwa number 1 of 2003 and then MUI fatwa Number 5 of 2005 which has some considerations (Jaramaya, 2022). Majority of Islamic scholars have agreed that intellectual property can be categorized as objects, precisely intangible objects that are able to provide benefits to others.

Therefore, it needs to be underlined again that it is necessary to review again in the scientific treasures about the purpose of the MUI issuing fatwas on the right of authorship in MUI fatwa Number 5 of 2005, about the influence given to society, especially to authors or holders of authorship rights who are normatively supposed to provide benefits, especially protecting their rights (Republik, 2009). One of the reasons in the issuance of the fatwa is the consideration of universal benefit which recognized by Islamic law (Rosyadi, 2013).

The realm of the MUI's great influence is not on the deterrent effect on violators but in safeguarding the moral rights of intellectual property rights holders and providing awareness for violators of their actions. Various parties have participated in preventing copyright violators and expressed their concern on book piracy. As well as from the Indonesian anti-counterfeiting (MIAP) community submitted a fatwa request to the MUI (Nasihah, 2017)

The government has also passed copyright protection laws in addition to the legal protections of these laws as curative and preventive scenarios. The MUI acts as its authority and domain as an association of Islamic scholars and scholars on the legal issue of Intellectual Property (Law on Intellectual Property) from the review of Islamic law by taking the stance that copyright infringement is an illegitimate act. This research uses the object of law No. 28 of 2014 and MUI fatwa No. 5 of 2005, these laws and fatwas have the realm of content about intellectual property rights fatwas with the aim of knowing the implementation and effectiveness of intellectual property rights in law No. 24 of 2014 and MUI Fatwa No. 5 of 2005.

LITERATURE REVIEW

Research on the legal protection of MUI fatwa No. 5 of 2005 perspective of *masalah mursalah* with the library research method with the result that the law conceived is more protective of the copyright holder of its legal provisions (Yuyun, 2010). In line with that, the study on *fair use* of books in Law No. 28 of 2014 with a case study in the Sriwedari book market, Surakarta. The method of approach used is juridical-empirical, concluding that in Article 44 Paragraph (1) The substantial use, taking, duplication, or alteration of a Work and/or Related Rights product in whole or in part is not considered a Copyright infringement if the source is mentioned or listed in full (Dyandra, 2018).

A study on sharia economic law on Law No. 28 of 2014 compiled by Puput Triana with a descriptive method, In this study it can be concluded that commercializing songs on the Youtube platform is legally haram because of copyright or licensing because from the view of Islamic law it includes property or *malls*, it is considered theft and is prohibited (Triana, 2019).

In addition, a study on book author royalties has been carried out with several case studies, namely, an Islamic Law Review of Book Author Royalties with a case study of book (Desi, 2019). The Law of The Agreement for Awarding Book Royalties According to Wahbah Zuhaili with a case study of Publisher Murni Faeyza Jalan Perintis Kemerdekaan No. 38 Medan Timur at the UIN North Sumatra Student Cooperative, Medan by (Mentari, 2017).

Another study on the background of the birth of the MUI fatwa on copyright and the influence of MUI Fatwa No. 1 / MUNAS VII / MUI / 15/2005 on the implementation of the copyrighted book copy photo service with the results of research (Ulfiyeni, 2011). In addition, research on book piracy in the Jogjakarta area has been carried out by Lasmana (2020). This research is about the business transaction process of buying and selling pirated books and a review of Islamic law on the practice of buying and selling pirated books in Yogyakarta. Furthermore, research on the Islamic view of copyright and in terms of positive laws and Islamic views on buying and selling pirated goods, in the study produced the results of an analysis that selling pirated goods is prohibited in Islam and considered as a criminal and getting punishment accordingly (Alimudin, 2015).

Copyright of a written work is the right of ownership of a work for an author that is maintained in shari'a. This right is maintained because its position is the same as other material rights, so that other parties are not allowed to use without the permission of the owner (M. Huda, 2020). In Islam, intellectual property rights are termed as *haq al-ibtikar*, it is because the fact that intellectual property emerged in Europe when the printing press was invented. In the Islamic concept, intellectual property rights are difficult to define with classical Islamic jurisprudence. In the right of authorship (*haq ta'lif*) is the transformation of thought (*ibtikar*) which has the nature of not plagiarizing or new thinking and can continue the theory of others that is not yet mature (Huda, 2020).

Fatwas are one of the dynamic products of Islamic law. As a result of *ijtihad*, the presence of fatwas does not stand alone (Kau, 2010). The form *ijtihad* has no coercive nature and is *dzanni* or relative. Therefore, fatwas occur when individuals, collectives or government agencies ask a fatwa to an Islamic jurist which in nature are very different from the laws in the Islamic state or court decisions, therefore fatwas have no legal consequences (Mudzhar, 1998).

The position of MUI fatwas in the positive legal system in Indonesia as a consideration in a decision making. Differently, national law has a binding nature concerning the regulation of the nation. Although they have different positions between legislation and fatwas, they both have the same purpose, namely for mutual benefit (Riadi, 2010).

In the implementation of intellectual property rights law, it not only disputes the application of deterrent effects but also provides awareness to the public so as to create comfort for copyright holders, legal structuring and legal effectiveness really work (Alfons, 2017). The explanation has a correlation with the implementation of the MUI fatwa on the substance of Intellectual Property Rights in terms of Islamic law in Indonesia, namely to provide awareness to protect intellectual property rights and provide legal protection so that people work freely without any worries about people taking rights without permission.

METHODOLOGY

A qualitative descriptive approach has been adopted in this study with primary and secondary data. The data collection techniques in the form of interviews, observations, and documentation. The data obtained from three academic authors

and nine non-academic authors. The diversification of data to gain a wider perspective of the problem. Data analysis with the method used is a descriptive method with a qualitative approach that aims to find out a problem and analyze an event. Analyzing qualitative data that is explanatory or descriptive systematically.

RESULT AND DISCUSSION

On April 12, 1982 Indonesia was ready from the legislation and repealed the Dutch copyright law and replaced Law number 6 of 1982 concerning copyright and became the product of the first copyright law of the Indonesian nation (DJKI, 2011) and continues to develop until now the last Law number 28 of 2014 which is valid until now. MUI is one of the Islamic organizations in Indonesia that is competent in issuing fatwas (Nasrullah, 2017). MUI has an indirect role in positive law in Indonesia because the MUI itself does not conflict and is relevant to Indonesian law as many infiltration laws are taken from MUI fatwas (Hakim, Z, 2021), MUI itself responds to copyright from an Islamic perspective as a form of response to the many who are harmed and so that the public gets a handle on copyright from an Islamic perspective, according to MUI copyright as *huquq maliyyah* and directly get legal protection like other goods. In addition to getting *huquq maliyyah* copyright can also be used as an object of contract according to MUI from business contracts and social contracts (Dewi, 2017).

Implementation of Fatwa Number 5 of 2005 and Law No. 28 of 2014

This research has interviewed several authors of academic and non-academic books on the right of authorship (*haq ta'lif*) to the implementation of fatwas and laws.

1. Academic Writers

Implementation Of Law Number 28 Of 2014 On Academic Writers

Regarding the implementation of Law No. 28 of 2014, the author of academic books agrees with the content of the law because it protects copyright and regulates intellectual works in the fields of science, art and literature. The interest for the author of an academic book is to spread his knowledge to make it more useful, if the objection may indeed be entirely to be commercialized and it may also be the only income profession earned.

Regarding the opinion on the implementation of the authorship rights law (*haq ta'lif*) from interviews with academic book authors, all have felt the implementation of the legal protection of authorship rights as in the latest law No. 28 of 2014 that the author of the book is given a copyright holder's identity card, according to the author of the book who is a lecturer by profession has been comfortable because it can also be used as legal evidence, appreciation and sense of being cared for by law.

Not only books, journals also have legal protection from plagiarism which can directly harm the author of the journal, then how do academic book authors think about plagiarism, *autocopy* other people's books without permission and without paying the slightest royalties. The opinions of academic book authors who work as

lecturers who are interviewed, all argue that if their work is hijacked and *photocopied*, they do not feel objections as long as they are not commercialized.

In addition, in journal authorship there is also a plagiarism test before publication in order to preserve the copyright of others, in this case the legal party has taken preventive measures so that there is no intentional or unintentional plagiarism and there can even be reprimands, written warnings and revocation of rights for lecturers for plagiarizing which depends on the level of plagiarism that is violated (Hermawan, 2019).

There are many behavioral factors plagiarism can occur among them:

- a. Lack of knowledge of writing papers;
- b. Looking for something instant;
- c. Easy access on the internet;
- d. Plagiarism is considered commonplace and;
- e. The legal process of the plagiarism case is too long.

Implementation of Fatwa Number 5 of 2005 against Academic Book Authors

The second author of academic authors agreed about the expectations of the MUI because in it many religious figures who are competent in dealing with the problem, cannot mess around to make decisions, many Islamic thinkers and Islamic figures in the Islamic organization, MUI.

Cases of copyright infringement by students almost the majority understand and respect for copyright holders, students need more specific socialization so that the attitude taken by students can accept the legal status carried out and realize this. The hope that MUI does is as the last wall that exists in students so that awareness appears in themselves but the facts on the ground of students only know about the status of Islamic law for copyright violators according to MUI. It can be said that MUI fatwas are only limited to providing legal views from an Islamic point of view without providing ties or deterrent effects, MUI fatwas represent Islamic law in Indonesia, therefore not a few ignore MUI fatwas even though they are not binding on the law (Hadikusuma & Ag, 2009).

2. Non-Academic Writers

Apart from academics, the author also classifies book authors from non-academic circles such as novelists, short story compilations and general encyclopedias.

Implementation Of Law Number 28 Of 2014 On Non-Academic Authors

The author has interviewed many non-academic book authors, one of which is the author of a book on stock investment and trading, he is also a capital market practitioner in Indonesia *"Regulations have been made but when I have done a report on some copyright violators of writing. Some are still young people <25 years old who claim not to know that this is an offence. Want to answer what is also confused."*

There is much that the author does not know about the material losses suffered by non-academic book authors and even indirectly the legal umbrella in Indonesia is

not optimal, even the legal certainty in the case thrown by the author, even the problem is getting longer and more complicated with the defendant's situation.

A different author argues that book piracy occurs especially *best seller* books. It is undeniable that the rampant piracy in bookstores has left copyright holders and publishers very financially disadvantaged because it lowers the market for official books sold (Morris et al., 2021). Even so, the law has also been felt by the author of the book which makes the author feel safe in publishing his work for the public to enjoy, the law directly protects the rights if the right is where the role of the law becomes visible.

An author of the non-academic book said that the law in Indonesia already exists but in enforcement and supervision is still not optimal, even he argues that some people still accept bribes from illegal businessmen so that the book piracy business runs smoothly.

Implementation Of Fatwa No. 5 Of 2005 Against Non-Academic Authors

During interviews with book authors, all agreed that the prohibition of book piracy from Islamic law, regardless of the law being haram, according to Marsella that even the views of Islam are not contrary to positive law, according to him:

"In line with religious values that oppose the misuse of one's copyright as referred to in the 4th number which contains "Any form of infringement of copyright, especially piracy, is a tyranny whose law is illegitimate."

Ideally, the expectations of the MUI should have enormous potential, because the MUI is not just any organization filled by ordinary people but filled with people who really understand in the field of Islamic law issues and the MUI organization is one of the centres ijthad of Muslims in Indonesia, the public's understanding is still lacking regarding MUI fatwas and book piracy cases that are fairly new and something abstract that has material rights and economic rights that make people have to understand more deeply about the expectations carried out by MUI (K. Huda, 2018).

The author of the book *"the history of the archipelago that was hidden"* felt quite surprised because for her it was quite harsh if copyright violators were punished with haram (sulistyowati, 2017), according to her this was quite harsh and should have a big impact on society, especially for violators (book piracy) especially since the people in Indonesia are Muslims.

According to author of the book "waiting for the morning, we are so precious and thank you for the past" he argued that he has not felt a meaningful impact because indeed in the fatwa itself there is no coercion but in literacy must exist. Most in the criticism for the fatwa lack of socialization or lack of knowledge except in academics in student research. The author added that appreciation was necessary for the regulation but his opinion *"the act of implementing its rules for violations not of the large corporation class is very much not working"*. It is understandable that the harshest criticisms have always been made by Ryan Filbert that these criticisms are accompanied by facts on the ground. Actually, fatwas cannot follow up for copyright violators (Riadi, 2010), the realm of the fatwa itself is only in providing legal status, cannot provide sanctions for copyright violators. In accordance with the meaning of the fatwa itself the fatwa is only the opinion of a problem.

Analysis of the effectiveness of Fatwa Number 5 of 2005 and Law Number 28 of 2014

1. Academic Writers

Analysis of the effectiveness of Law Number 28 of 2014

There is still a lot of plagiarism in the society (Rizky, 2017). Maybe in the presentation it is good like the Turnitin test and in the citations have been taught to give moral rights but the fact is that there are still many students who do not pass the Turnitin test because they copy and *paste* a lot on the web or other people's journals. It can be said that the effectiveness in socialization on campus can be appreciated even though there are still many violators.

Copyright violations also occur in lecturers, to overcome this in journal publications carried out by lecturers, it is necessary to have plagiarism tests as well as to take preventive measures. The punishment issued is also arguably not light, it could be that the lecturer is revoked as a lecturer or demoted to provide a deterrent effect for perpetrators of plagiarism committed by lecturers (Komunita, 2015). The regulations that occur on campus are quite effective, it's just that the culture of imitating or plagiarizing is ingrained in Indonesian campuses.

Analysis of the effectiveness of fatwa number 5 of 2005

The form of effectiveness felt by the author of the book is a form of appreciation from the MUI, not felt from the visible and real. Perhaps only some people know the status of Islamic law regarding the expectation of plagiarism in works. Because the implementation of fatwas is less felt or the real impact felt does not exist and is only limited to knowledge of Islamic science, do not have to know the law to make guidelines in writing a thesis, may only be used as a reference for other perspectives or discussions that are Islamic-based or certain people who discuss this all. According to the author of the book, it actually has enormous potential, the community of Muslims in Indonesia is a force that can be used as a forum for socialization about intellectual property rights from an Islamic perspective, as in Islamic methodology, there is a lack of socialization of perspectives from Islam in the urgency of citations (Hadikusuma & Ag, 2009). There is no direct impact felt by the author of the book, the fact is that the MUI fatwa has no legal ties to comply but the community should make the center for guidelines represent the problem of the Islamic base. As is the role of the MUI as answering the problems of society posed by the Islamic perspective.

2. Non-Academic Writers

Analysis Of The Effectiveness Of Law Number 24 Of 2014 On Non-Academic Authors

Effectiveness is not felt for non-academic book writers, many of their books are still being copied illegally. Enforcement is still complicated and the legal system of *sweeping* complaints or raids in bookstores to provide a deterrent effect for

booksellers and the circulation of pirated books. Not only in offline book stalls but in *E-commerce*, there are also frequent sales of pirated books (Putri et al., 2022).

Other non-academic book authors think the impact has been felt but less effective, this shows that the author of the book appreciates the law issued as a form of legal protection for the aggrieved person. There is still a lot of piracy of books according to the author of the book, many outsiders of which hijack books for personal gain.

Analysis Of The Effectiveness Of Fatwa No. 5 Of 2005 On Non-Academic Authors

There has been no significant impact of the MUI fatwa on the author of the book and does not know about the Islamic perspective on the law of book piracy. Pirated booksellers may not know that what is done violates Islamic law according to the MUI because selling pirated books is prohibited in Islam. The views of the book authors themselves actually really appreciate the attitude of the MUI's decision, the fatwa can be said that the MUI contributes and plays a role as its duty, providing views from an Islamic religious perspective, but unfortunately the majority of the public does not know the MUI fatwa, this makes the role of the MUI less felt, especially for pirated book sellers and pirated book buyers, there is still a lot of phenomena of buying and selling pirated books.

1. Academic Writers

Table 1. Academic Writer Interview Results

No.	Name	Implementation Opinion	Enforcement Opinion	Effectiveness Opinion	Prohibition Opinion	Perceived impact
1.	Auhtor o1	V	V	X	V	X
2.	Author o2	V	X	V	V	X
3.	Author o3	V	X	X	V	X

Copyright in the campus scope focuses more on violators of moral rights such as committing acts of plagiarism, citing without including sources and photocopying books without permission for academic purposes (Astuti et al., 2021).

The effectiveness of fatwa No. 5 of 2005 concerning intellectual property rights against book authors has less impact, indeed the MUI has forbidden copyright infringement but the expectation is intended and felt for the community, especially for copyright violators (Nasihah, 2017). Like this thesis research interview, that the author of an academic book does not feel the impact felt directly. In addition to the lack of perceived impact, socialization in the campus world has not been carried out thoroughly, few of the campuses have studied or discussed a problem from the perspective of Islamic law.

The various views of academic book authors all do not mind if their work is copied or reproduced on the condition that the work is for books on campus or makes it easier for readers who want to read it, the substance is that the knowledge written by the author of the book is to spread the book widely read. It's a different case if the book is commercialized and without permission, the advantage is that it is for its mere greed not to think about others.

2. Non-Academic Writers

Table 2. Non-Academic Author Interview Data

No.	Name	Implementation Opinion	Enforcement opinion	Effectiveness Opinion	Prohibition Opinion	Perceived impact
1.	Author 01	X	X	X	In	X
2.	Author 02	V	V	V	In	X
3.	Author 03	V	V	V	In	X
4.	Author 04	V	V	X	In	X
5.	Author 05	V	X	X	In	X
6.	Author 06	X	X	X	In	X
7.	Author 07	V	X	X	In	X
8.	Author 08	V	X	X	In	X
9.	Author 09	V	X	X	In	X

Various views have been expressed by the sources with the results of the analysis with the majority of all lacking in feeling the effectiveness of the Copyright Law, the enforcement of the legal umbrella that is still lacking and the existence that is not well known by the public are reasons for violators to escape the legal snare reported by the author of the book himself. Book authors are also somewhat confused by the problem because they feel aggrieved but cannot have a deterrent effect on the perpetrators of book piracy, including for large corporate offenders. The experience described by the author of the book also makes a view other than enforcement in the field but the ineffective complaint process makes the author of the book somewhat objectionable in processing.

Lack of understanding and limited socialization make book authors less aware of details (Chairan, 2011). Juridically, the law regarding copyright violators seems to have decreased, which in the copyright law in Law Number 28 of 2014 is a violation of complaints that makes enforcement and legal proceedings longer (sudjana, 2022). Non-academic book authors object if their books are commercialized and taken advantage of only for personal use, on the other hand, book authors also feel pity for

people who cannot afford to buy books, maybe what is considered heavy is piracy of books that are *copied* and mass-produced, as from interview sources who share their experiences when buying books in one of the *E-commerce*.

In Indonesia, it is not only the strength of positive law but is supported by the decision of the MUI DSN fatwa which is relevant and does not conflict with the laws and regulations and sometimes even the law absorbs the decision regulations from the MUI DSN fatwa, the existence of the MUI actually has a role in providing views for Muslims in Indonesia (Fariyah, 2009).

The same thing happens from the view of the author of the book itself who does not know about the MUI fatwa and the existence that is not felt to exist so that maybe the author of the book only relies on copyright law. Most likely the legal umbrella used by book authors is only laws and regulations issued by the government (Sulistyowati, 2017).

CONCLUSION

Book authors are divided into two: academic book authors and non-academic book authors, both of whom have different case studies of lawlessness. The focus of the problem of academic book authors is more on violations of moral rights such as plagiarism whereas the problem of violations of non-academic book authors focuses on economic rights issues such as commercialized book piracy which directly harms the author of the book itself because the author of the non-academic book itself does publish books to profit from the sale of books or maybe writing is the only one of his incomes.

The effectiveness of law number 28 of 2014 concerning copyright is still lacking in the implementation and enforcement of the problem of non-academic book authors. Apart from that, the Law 28 of 2014 book piracy becomes a violation of complaints which makes book authors add objections while law enforcement on campus regarding copyright is not good and felt for academic book authors because plagiarism violations can be reduced by conducting a similarity test or checking journal or book to be published. For piracy or duplication of books carried out by students if it is for learning and supporting the handbook, the lecturer or copyright holder gives permission indirectly because it is to make it easier.

The existence of MUI fatwas is aimed at the public to provide legal views on book piracy, MUI has outlined its duties according to its authority, namely prohibiting book piracy, for academic and non-academic book authors agree on the expectation of this matter, but the existence of MUI fatwas is not known even though it has great potential for influence.

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