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Islamic Perspectives on Intellectual Property Rights and the Fashion Industry in Malaysia

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ABSTRACT

This research examines Islamic perspectives on intellectual property rights (IPRs) and their relevance to the fashion industry in Malaysia. It aims to analyse how principles derived from Shariah and *fiqh* intersect with civil IPR frameworks to address pressing issues such as counterfeiting, unethical design replication, and misrepresentation in Islamic fashion branding. Adopting a qualitative doctrinal methodology, the research draws from primary Islamic legal sources, including al-Quran, *Sunnah* (the sayings, actions, silent approvals, and character of Prophet Muhammad PBUH, and classical juristic interpretations, alongside Malaysia's statutes, case law, and industry case studies. The findings reveal that while Malaysia has a robust civil IPR regime, it lacks integration with Islamic ethical principles, particularly in regulating modest fashion and ensuring compliance with Shariah values. This research offers a novel perspective by aligning key Islamic legal doctrines such as *ḥifẓ al-māl* (protection of wealth), *amānah* (trust), and *maṣlaḥah mursalah* (public benefit) with modern IPR mechanisms. It further highlights the potential of incorporating *ḥisbah*-based regulation and Islamic arbitration (*taḥkīm*) to strengthen enforcement. This research explores how principles of Shariah can be meaningfully applied to the protection of intellectual property within Malaysia's fashion industry. By drawing on real challenges faced by designers and industry players, it offers grounded insights for policymakers, regulators, and entrepreneurs seeking to navigate the intersection of innovation, ethics, and faith. The research highlights the need for a clearer and more consistent legal approach that aligns with Shariah principles, aiming to protect designers' rights, strengthen public confidence, and support the continued growth of the Islamic fashion sector in Malaysia.

INTRODUCTION

The fashion industry is a vibrant space for creativity and cultural expression, but it faces issues such as counterfeiting and inadequate legal protections for designers. In Malaysia, where Islam influences social and legal aspects, it is worth exploring how Islamic principles can enhance intellectual property rights (IPRs) for fashion designers. This research investigates how Shariah and *fiqh* (Islamic jurisprudence) can strengthen intellectual property (IP) protection, proposing a framework that balances creator's rights with Islamic values.

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The study specifically examines Islamic legal perspectives on IPRs in Malaysia's fashion sector, focusing on modest and Islamic fashion, which are often overlooked. While many studies have discussed Islamic views on IP broadly, this research connects those ideas to the realities of a market that caters to Muslim consumers. It shows that Islamic jurisprudence can effectively address modern design protection challenges, highlighting the potential for traditional values and current legal needs to coexist and shape the future of fashion.

The significance of this work lies in its provision of an ethical framework for designers in Muslim-majority contexts who wish to align their commercial activities with Islamic teachings. By elucidating how principles such as *haqq* (rights)*, maslahah mursalah* (public benefit)*,* and *sadd al-dhara'i* (blocking the means to harm) support intellectual protection, the research contributes to ongoing discussions on Islamic commercial ethics and innovation. The insights derived from this research are pertinent not only for legal scholars and policymakers but also for fashion entrepreneurs targeting Muslim markets.

METHODOLOGY

The research employs a qualitative doctrinal research methodology that combines a thorough literature review of academic articles and credible legal sources with a critical analysis of primary Islamic texts, including translations of al-Quran and *Sunnah* (sayings, actions, and silent approvals of the Prophet Muhammad PBUH). Its goal is to uncover the ethical foundations of IPRs within the context of Islamic principles as they relate to the fashion industry. Additionally, the research incorporates scholarly interpretations and examines case studies of fashion designers who effectively integrate Islamic tenets into their creative practices. By adopting this doctrinal approach, the research seeks to create a cohesive framework that connects Islamic teachings with modern challenges in IPRs. Ultimately, it highlights the opportunity to enhance protection for designers while promoting a fashion ecosystem rich in ethical integrity and moral responsibility.

Nevertheless, this research acknowledges a significant limitation: the absence of empirical evidence. While the doctrinal method is suitable for exploring the legal-theoretical dimensions of IPRs in Islamic contexts, the research would benefit greatly from incorporating qualitative empirical methods, such as interviews with Malaysian designers, Islamic legal scholars, or IPR professionals. Such empirical engagement would provide crucial insights into how doctrinal principles are applied in real-world contexts, thus offering a more holistic and practice-oriented understanding of the interaction between *fiqh* and IPRs in the Malaysian fashion industry.

FINDINGS AND DISCUSSION

Clothing and Fashion Concepts in Islam

According to Kamil et al. (2021), to contextualise Islamic fashion principles, it is essential to note that al-Quran underscores both the functional and spiritual dimensions of clothing. Islam describes clothing as a divine provision intended to cover the body and serve as adornment, while also highlighting its symbolic association with righteousness. Allah SWT cautions the children of Adam against being misled by evil, declaring:

يَٰبَنِيٓ ءَادَمَ قَدۡ أَنزَلۡنَا عَلَيۡكُمۡ لِبَاسٗا يُوَٰرِي سَوۡءَٰتِكُمۡ وَرِيشٗاۖ وَلِبَاسُ ٱلتَّقۡوَىٰ ذَٰلِكَ خَيۡرٞۚ ذَٰلِكَ مِنۡ ءَايَٰتِ ٱللَّهِ لَعَلَّهُمۡ يَذَّكَّرُونَ ٢٦ يَٰبَنِيٓ ءَادَمَ لَا يَفۡتِنَنَّكُمُ ٱلشَّيۡطَٰنُ كَمَآ أَخۡرَجَ أَبَوَيۡكُم مِّنَ ٱلۡجَنَّةِ يَنزِعُ عَنۡهُمَا لِبَاسَهُمَا لِيُرِيَهُمَا سَوۡءَٰتِهِمَآۚ إِنَّهُۥ يَرَىٰكُمۡ هُوَ وَقَبِيلُهُۥ مِنۡ حَيۡثُ لَا تَرَوۡنَهُمۡۗ إِنَّا جَعَلۡنَا ٱلشَّيَٰطِينَ أَوۡلِيَآءَ لِلَّذِينَ لَا يُؤۡمِنُونَ ٢٧

O children of Adam! We have bestowed raiment upon you to cover yourselves (screen your private parts, etc.) and as an adornment, and the raiment of

> righteousness, that is better. Such are among the Ayat (proofs, evidence, verses, lessons, signs, revelations, etc.) of Allah, that they may remember (i.e., leave falsehood and follow truth). O Children of Adam! Let not Shaitan (Satan) deceive you, as he got your parents (Adam and Hawa) out of Paradise, stripping them of their raiments, to show them their private parts. Verily, he and Qabiluhu (his soldiers from the jinns or his tribe) see you from where you cannot see them. Verily, We made the Shayatin Auliya' (protectors and helpers) for those who believe not.
>
> Surah al-A'raf, 7: 26–27

Additionally, Allah SWT reiterates the multifaceted utility of clothing as protection against natural elements and harm, and as a manifestation of divine grace, thereby framing attire not only as a necessity but also as an expression of submission to divine will:

> وَٱللَّهُ جَعَلَ لَكُم مِّمَّا خَلَقَ ظِلَٰلًا وَجَعَلَ لَكُم مِّنَ ٱلْجِبَالِ أَكْنَٰنًا وَجَعَلَ لَكُمْ سَرَٰبِيلَ تَقِيكُمُ ٱلْحَرَّ وَسَرَٰبِيلَ تَقِيكُم بَأْسَكُمْ ۚ كَذَٰلِكَ يُتِمُّ نِعْمَتَهُۥ عَلَيْكُمْ لَعَلَّكُمْ تُسْلِمُونَ ﴿٨١﴾
>
> And Allah has made for you out of that which He has created shades and has made for you places of refuge in the mountains and has made for you garments to protect you from the heat (and cold), and coats of mail to protect you from your (mutual) violence. Thus does He perfect His Grace unto you, that you may submit yourselves to His Will (in Islam).
>
> Surah al-Nahl, 16: 81

Correspondingly, al-Quran employs various terms for garments, as detailed in Tafsir Mawdhu'i: Pakaian dalam al-Quran, including terms such as *libās* (clothing, garment)*, thiyāb* (clothes or garments)*, sarābīl* (cloaks or garments)*, khimar* (headscarf or veil)*, kiswah* (cloth that covers the *Kaabah* in Makkah)*, qamiṣ* (shirt or tunic)*,* and *jilbab* (a loose-fitting outer garment). Moreover, Maarif et al. (2018) outline five key principles underlying the concept of Islamic fashion: complete body coverage, avoidance of overly conspicuous designs, careful selection of appropriate fabrics, prohibition against imitation of non-Islamic clothing styles (*tasyabbuh*), and rejection of arrogance or ostentation. Collectively, these principles reinforce the values of modesty and ethical restraint that shape Islamic dress codes.

In a complementary vein, al-Barudi (2021), in his Tafsir Wanita dalam al-Quran, offers a more nuanced interpretation of Muslim women's attire. He asserts that clothing should cover the entire body except the face and hands, while acknowledging that cultural and climatic contexts may influence personal choices. Al-Barudi (2021) further advises that garments must embody modesty, avoiding designs that are excessively striking or that expose the skin's colour. Fabrics should be of suitable texture and structure, and women are cautioned against wearing clothing that resembles that of men or adherents of other religions, in line with the principle of *tasyabbuh.* He also emphasises that attire should not be a vehicle for vanity or social distinction, as Islamic teachings promote humility and discourage extravagance (Maarif et al., 2018). In addition, Mustami (2015) identifies several educational principles inherent in Islamic attire; it conceals the *aurah* (parts of the body that must be covered), provides protection, signifies personal identity, and shapes moral personality.

Equally significant, Manu et al. (2023) observe that Muslim women primarily regard the hijab (head covering) as a religious obligation rather than a fashion statement. This view is echoed by Aris et al. (2018), who emphasise that Islamic fashion design should be guided by individuals with a sound understanding of Islamic dress jurisprudence. They argue that clothing in Islam constitutes a form of *ibadah* (worship), underscoring modesty rather than superficial aesthetics. In terms of design trends, Islamic fashion often adopts modest silhouettes such as tube, pencil, A-line, and empire cuts, which preserve modesty while allowing stylistic expression. The Quran does not mandate specific garments, thereby accommodating cultural diversity as long as the principle of modesty is observed. Islamic teachings on attire thus embody a holistic perspective that integrates functionality, modesty, and cultural adaptability. Quranic guidance and scholarly interpretations frame clothing not merely as a

practical necessity but as a medium for expressing ethical conduct and piety. This flexibility enables cultural expression within religious boundaries, allowing the global Muslim fashion industry to flourish without undermining spiritual principles. In Malaysia's diverse society, these values reinforce the religious and ethical foundation of fashion, where clothing serves as both an expression of faith and identity.

Islamic Perspectives on Intellectual Property Rights

Islamic Concepts of Rights and Ownership

To appreciate the Islamic position on IP, it is first necessary to understand the broader framework of *haqq* in *fiqh*. According to Niazi (2016), *haqq* encompasses financial and non-financial entitlements, legal obligations arising from contracts, stipends for public officials, land-related easements, and *huqūq mujarradah* (pure rights), which include creative rights. Fundamentally, only those rights recognised by Shariah qualify as legitimate.

Niazi (2016) categorises rights into three distinct groups. The first group includes fully transferable rights concerning corporeal property, which can be exchanged through various means such as sales, hire agreements, gifts, or bequests. The second group comprises non-transferable and non-relinquishable rights, particularly those rooted in Shariah, designed to protect individuals from harm. This includes rights related to pre-emption, conjugal matters, child custody, and authority (*wilāyah)*. Finally, the third category consists of rights that may be mutually relinquished and can be sold, applicable to aspects of human property and trade for wealth, although this does not extend to the vacation of office.

Nevertheless, *haqq* is not absolute. Excessive IP protection may function as a monopoly, contradicting Islamic principles. The Prophet Muhammad PBUH warned:

> مَنْ احْتَكَرَ فَهُوَ خَاطِئٌ
>
> Whosoever monopolises is a wrongdoer.
>
> (Hadith Muslim)

However, when IP involves necessity, the situation becomes more complex. For instance, monopolising IPRs over a life-saving cure may be impermissible. In such cases, the government may need to purchase these rights at a fair price and ensure public access at reasonable costs, thereby balancing innovation incentives with societal welfare (Malkawi, 2013).

Therefore, it is essential to provide a background on Islamic law as one of the world's major legal systems, to establish its relevance to IPRs. Understanding the foundations and sources of Shariah is crucial in examining the relationship between IP and Islam. Malkawi (2013) notes that while Shairah does not specifically legislate IP, it recognises the concept of intellectual creation through the notion of *haqq al-ibtikar* (the right to invent). This recognition aligns with the broader goal of protecting wealth (*ḥifẓ al-māl)* within the objectives of *maqasid al-shariah*. Although IP is intangible, it holds both economic and legal value, and is therefore regarded as property within *fiqh* (Busu et al., 2021).

As reinforced in Surah al-Baqarah, 2: 188*:*

> وَلَا تَأْكُلُوٓاْ أَمْوَٰلَكُم بَيْنَكُم بِٱلْبَٰطِلِ وَتُدْلُواْ بِهَآ إِلَى ٱلْحُكَّامِ لِتَأْكُلُواْ فَرِيقًا مِّنْ أَمْوَٰلِ ٱلنَّاسِ بِٱلْإِثْمِ وَأَنتُمْ تَعْلَمُونَ ﴿١٨٨﴾
>
> And eat up not one another's property unjustly (in any illegal way, e.g., stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully.
>
> Surah al-Baqarah, 2: 188

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This verse underscores the prohibition of unjust enrichment and the unethical acquisition of others' property, thereby supporting legal protection for IP (Kamil et al., 2021). Similarly, Khan and Lone (2013) argue that Islam upholds personal rights, endorsing fair wealth accumulation and lawful labour. The emphasis on personal integrity in earning one's livelihood is further reinforced by the saying of Prophet Muhammad's PBUH,

> "Nobody has ever eaten a better meal than that which one has earned by working with one's own hands. The Prophet of Allah, David used to eat from the earnings of his manual labour." (Hadith no. 286, Khan, n.d.).

This hadith highlights Islam's recognition of an individual's right to benefit independently from their efforts. Additionally, Islam advocates the lawful acquisition of wealth and strictly condemns illicit means of doing so. This principle is exemplified by the Prophet Muhammad's PBUH active engagement in trade (Khan & Lone, 2013). Furthermore, Islam strongly opposes unethical practices such as copying, counterfeiting, and theft (Kamil et al., 2021). This opposition is reflected in the way Islam denounce deceit in commercial transactions:

وَيۡلٞ لِّلۡمُطَفِّفِينَ ١

> Woe to al-Mutaffifin [those who give less in measure and weight (decrease the rights of others)].
>
> Surah al-Mutaffifin, 83: 1-3

The verses explain that those who, when receiving by measure from men, demand full measure, but when giving by measure or weight, give less than due, are condemned (Khan & Lone, 2013; Kamil et al., 2021). These verses emphasise honesty in trade and dealings, reinforcing the prohibition of fraudulent activities that could undermine IPRs (Khan & Lone, 2013). Moreover, the Quran explicitly condemns theft, as stated:

وَٱلسَّارِقُ وَٱلسَّارِقَةُ فَٱقۡطَعُوٓاْ أَيۡدِيَهُمَا جَزَآءَۢ بِمَا كَسَبَا نَكَٰلٗا مِّنَ ٱللَّهِۗ وَٱللَّهُ عَزِيزٌ حَكِيمٞ ٣٨

> Cut off (from the wrist joint) the (right) hand of the thief, male or female, as a recompense for that which they committed, a punishment by way of example from Allah. And Allah is All-Powerful, All-Wise.
>
> Surah al-Maidah, 5: 38

Additionally, a hadith narrated:

تَعيشِوا، ألَا لا تَظلِموا، ... إنَّه لا يَحِلُّ مَالُ امرئٍ مُسلِمٍ إلَّا بطِيبِ نَفْسٍ منه

> Live together but do not do wrong (..) for taking the property of a man is not permissible except by his finding it good.
>
> Reported by Ahmad: 20695

This affirms that property cannot be taken without consent, emphasising Islam's commitment to lawful ownership and innovation. Thus, Shariah recognises the legitimacy of IPRs, provided they do not infringe upon public interest (Khan & Lone, 2013).

The Concept of Mal and Intangible Property

Azmi (1995) argues that IPRs correspond with the Islamic legal concept of *mal* (property), notwithstanding classical Hanafi reservations. The research contends that IPRs, derived from *'amal* (labour), resemble *manfa'ah* (benefits), and that intellectual labour warrants legal recognition equivalent to physical work. Framed as usufructuary rights, IPRs are distinguished from prohibited monopolisation, as they confer control over usage rather than absolute dominion. Modern *fiqh* increasingly acknowledges intangible assets under the evolving concept of *mal*. Classical definitions

categorise *mal* as valuable, appropriable, and lawful, while contemporary scholarship extends its application to digital assets such as non-fungible tokens (Ahmad & Sobri, 2024).

The juristic schools adopt different approaches to defining wealth (*māl).* The Shāfiʿī and Hanbalī schools emphasise utility and lawful benefit, whereas the Mālikī school prioritises exclusivity and control. In contrast, the Ḥanafī school has historically confined *māl* to tangible objects, excluding rights and usufructs. Nevertheless, contemporary interpretations particularly in light of technological advancements, have broadened these parameters (Ahmad & Sobri, 2024). According to Rosele et al. (2022), any item that possesses value and provides benefit may be classified as *māl,* provided it is not explicitly prohibited under Islamic law. The Mālikī, Shāfiʿī, and Ḥanbalī schools of thought adopt relatively broad interpretations of *māl,* whereas the Ḥanafī school maintains a more restrictive stance. However, the rapid evolution of digital technologies and intangible assets has prompted renewed engagement with these classical definitions through the framework of *maqasid al-shariah*, particularly the principles of *ḥifẓ al-māl* and *maṣlaḥah mursalah*. (public interest). Within this context, the recognition of IPRs as legitimate forms of wealth deserving protection under Islamic law becomes increasingly justified.

The intersection of Islamic principles and modern IPRs highlights the importance of safeguarding creative works within the ambit of Shariah. While Islamic law does not offer a precise definition of IP, it emphasises fundamental values such as honesty, justice, and the prohibition of unjust enrichment. These values support the recognition of intellectual creations as forms of protected property, underscoring both the ethical and legal imperatives of IPR protection. Incorporating Islamic legal principles into modern IPR systems therefore enhances their legitimacy, moral foundation, and societal acceptance, particularly in Muslim-majority jurisdictions such as Malaysia.

The Concept of Ibtikar (Innovation and Creativity) in Islamic

The convergence of Islamic legal principles with modern IPR frameworks highlights the necessity of safeguarding creative works within a Shariah-compliant system. While Islamic jurisprudence does not explicitly define IP, it emphasises fundamental values such as honesty, justice, and the prohibition of unjust enrichment. These principles provide a jurisprudential and ethical basis for recognizing intellectual creations as deserving of legal protection. Accordingly, the integration of Islamic legal concepts into contemporary IPR regimes can reinforce their moral legitimacy and strengthen their acceptance, particularly within Muslim-majority contexts such as Malaysia (Hayati and Ali, 2021).

Foundations of Copyright Protection in Islam

The foundation for copyright protection in Islam is grounded in scholarly interpretations from both classical and modern jurists. As noted by Busu et al. (2021), the twentieth-century Islamic jurist, Mustafa Ahmad al-Zarqa, asserts that IP includes copyright, including an author's right to derive economic benefit from literary works and a journalist's entitlement to their publications. Similarly, al-Shaykh Ali al-Khafif describes IP as intangible entities that, while imperceptible to the senses, can be apprehended through intellectual and cognitive faculties. These include ideas and creative expressions that constitute intellectual rights. From a legal perspective, *fiqh* recognises IPRs as a distinct category of rights granted by Shariah, empowering individuals to control and regulate the appropriate usage of their creative works.

Hayati and Ali (2021) note that contemporary Muslim scholars, such as Fathi al-Duraini, affirm the legitimacy of copyright protection within Islamic jurisprudence by grounding it in *ʿurf* (customary practice) and *maṣlaḥah mursalah*. A growing consensus among scholars recognises that *ibtikār* (creative innovation) possesses inherent value and deserves ownership, thereby placing intellectual creations on par with tangible assets such as vehicles or homes. Further elaborating on this view, Hayati and Ali (2021) identify several foundational legal doctrines that support copyright protection. First, *ʿurf* validates copyright as a socially embedded norm, even in the absence of explicit scriptural endorsement. Second, *maṣlaḥah mursalah* justifies legal protection on ethical grounds, specifically the obligation to honour creators and prevent injustice, thereby securing both moral recognition and

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financial reward for authors. The broader implications of IP extend beyond individual creators, affecting publishers and the wider creative and economic ecosystems (Meirison & Nazar, 2021).

Hayati and Ali (2021) further argue that, unlike the ownership of physical property, IPRs confer exclusive rights over intangible works without infringing on the rights of others. The principle of *darf al-mafāsid wa jalb al-maṣāliḥ* (the prevention of harm and promotion of benefit) lends further support to copyright protection by emphasising its role in sustaining innovation. In the absence of adequate legal safeguards, creative efforts may diminish, thereby impeding cultural and economic progress. The application of *qiyās* (analogical reasoning) reinforces this argument by equating a creator's entitlement to the fruits of their intellectual labour with the remuneration due to a worker. Just as compensation is permitted for the recitation of Quranic verses for healing, authors are likewise entitled to derive benefit from their intellectual output. Additionally, the principle of *sadd al-dharā'iʿ* supports the enforcement of copyright laws, ensuring fair compensation while discouraging piracy and unethical reproduction.

Importantly, some scholars even allow financial remuneration for religious instruction, thereby reinforcing the permissibility of copyright protection within Islamic frameworks. In this regard, Islamic legal teachings acknowledge copyright as a valid form of property, safeguarding it against unjust appropriation (Kamil et al., 2021). This is corroborated by Surah al-Baqarah, 2: 188, and further reinforced by Surah al-Nisa', 4: 29, which states:

وَلَا تَأْكُلُوٓاْ أَمْوَٰلَكُم بَيْنَكُم بِٱلْبَٰطِلِ وَتُدْلُواْ بِهَآ إِلَى ٱلْحُكَّامِ لِتَأْكُلُواْ فَرِيقًا مِّنْ أَمْوَٰلِ ٱلنَّاسِ بِٱلْإِثْمِ وَأَنتُمْ تَعْلَمُونَ ﴿١٨٨﴾

> And eat up not one another's property unjustly (in any illegal way, e.g., stealing, robbing, deceiving, etc.), nor give bribery to the rulers (judges before presenting your cases) that you may knowingly eat up a part of the property of others sinfully.
>
> Surah al-Baqarah, 2: 188

يَٰٓأَيُّهَا ٱلَّذِينَ ءَامَنُواْ لَا تَأْكُلُوٓاْ أَمْوَٰلَكُم بَيْنَكُم بِٱلْبَٰطِلِ إِلَّآ أَن تَكُونَ تِجَٰرَةً عَن تَرَاضٍ مِّنكُمْ ۚ وَلَا تَقْتُلُوٓاْ أَنفُسَكُمْ ۚ إِنَّ ٱللَّهَ كَانَ بِكُمْ رَحِيمًا ﴿٢٩﴾

> "O you who believe! Eat not up your property among yourselves unjustly except it be a trade amongst you, by mutual consent. And do not kill yourselves (nor kill one another). Surely, Allah is Most Merciful to you."
>
> Surah al-Nisa', 4: 29

Both verses underscore the sanctity of lawful ownership and the prohibition of unjust enrichment, thereby forming a textual basis for copyright enforcement (Hayati and Ali, 2021). In parallel, *fiqh* also provides a temporal framework for monopoly rights, which can analogously apply to copyright. For instance, the concept of *ḥikr* (monopoly rights) over *waqf* land is considered to expire 60 years after the owner's death. This precedent resembles the protection term under current copyright laws, where literary and artistic works are safeguarded for 50 years posthumously (Malkawi, 2013). Thus, classical Islamic rulings offer interpretative flexibility for aligning with modern IPR timelines.

Nevertheless, Azmi (1995) highlights that the Islamic perspective on freedom of expression differs significantly from Western copyright norms. In contrast to Western frameworks that often regard copyright as a positive individual right, Shariah treats it as a conditional entitlement that must comply with Islamic values. Specifically, content must adhere to the tenets of Shariah; hence, works promoting immorality or contravening Islamic ethics are excluded from copyright protection. This divergence reflects a more ethically grounded yet restrictive approach than international copyright conventions.

Historically, the Islamic intellectual tradition upheld rigorous standards of scholarly integrity, especially in the compilation of hadith, where authenticity and accuracy were paramount. Muslim scholars frequently reproduced and disseminated each other's works without seeking monetary

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compensation. Under the Abbasid Caliphate, scholars were often honoured for their contributions to knowledge, although formal legal protections for IP were minimal. Consequently, IPRs in the Islamic tradition were primarily moral obligations rather than codified legal rights. By contrast, the modern IPR system evolved in the West alongside the invention of the printing press and the subsequent growth of the publishing industry. This technological advancement necessitated formal regulation of authorship and distribution rights, leading to the development of structured legal protections. As a result, Islamic and Western approaches to IP protection followed distinct trajectories, shaped by differing cultural, technological, and religious factors (Meirison & Nazar, 2021).

The Islamic framework affirms the moral and legal legitimacy of intellectual creations, provided they do not contravene Shariah principles. Foundational doctrines such as *ʿurf, maṣlaḥah mursalah, qiyās, darf al-mafāsid wa jalb al-maṣāliḥ, and sadd al-dharā'iʿ* collectively support the legal protection of authors' rights and the provision of fair compensation. At the same time, Shariah imposes ethical boundaries to prevent monopolistic practices and ensure public access to beneficial knowledge. This balanced and ethically grounded approach reflects the underpinnings of Islamic law in shaping an IP framework that upholds both individual creativity and collective welfare.

Foundations of Trademark Protection in Islam

The recognition of trademarks within *fiqh* is closely associated with the principle of consumer protection. As Azmi and Phuoc (2021) observe, Islam acknowledges trademarks as safeguard against fraudulent practices such as counterfeiting and imitation, which are expressly condemned in the Quran and *Sunnah*. Contemporary Muslim scholars, including Amin (1992), Mangalo (1982) and Kadir (1989), emphasise that protecting consumers from deception is a central rationale for upholding trademark rights. Within Shariah, ownership of a trademark is generally accorded to the first manufacturer who employs a distinctive symbol to differentiate their products, thereby establishing a legitimate claim of use. Further, scholars such as Sanhuri (1998) and Taha (1974) affirm that trademarks function not merely as identifiers but also as indicators of quality and reliability. By enhancing the reputation and credibility of manufacturers and traders, trademarks play a vital role in fostering trust and accountability in commercial transactions. This perspective aligns with Shariah's broader ethical objectives, which prioritise honesty, transparency, and fairness in economic dealings. Thus, trademark protection in Islam extends beyond commercial convenience; it reflects a moral obligation to prevent deception, ensure consumer welfare, and preserve integrity in trade. In this way, trademarks are not only commercial instruments but also vehicles for upholding justice and reinforcing the ethical foundations of a Shariah-compliant marketplace.

Remedies for IPR Violations

In cases of IP violations, it is essential to acknowledge that IPRs, like other forms of property, warrant legal protection under Shariah. However, neither the Quran nor *Sunnah* prescribes *ḥadd* (fixed corporal punishment) for intellectual theft. Consequently, classical *fiqh* does not extend *ḥadd* to IPR infringements. Instead, such offences fall under *taʿzīr* (discretionary punishment), which grants judges the authority to determine appropriate sanctions, such as fines, imprisonment, or corrective measures, based on the circumstances. The flexibility of *taʿzīr* ensures that Islamic legal systems remain adaptable to contemporary contexts while upholding Shariah principles (Malkawi, 2013).

Naser and Muhaisen (2009) further argue that IPR infringement cannot be classified as *ḥadd* offences because the essential condition of exclusive ownership is absent. Their reasoning is rooted in the public authorship model of IPR, which holds that intellectual creations are jointly held by the registrant and the wider community. Since intellectual works cannot be physically secured or stored like tangible assets, they fail to meet the criteria necessary for *ḥadd* application. Instead, the value of such works lies in their recognition and dissemination rather than exclusive custody.

On the other hand, Malkawi (2013) contends that IP infringement constitutes a form of theft but still maintains that *ḥadd* cannot be imposed due to the lack of explicit textual evidence in the Quran or *Sunnah* addressing intellectual theft. He emphasises that no historical precedent exists for applying *ḥadd* to IP violations. Rather, such cases fall under *taʿzīr,* where judges may impose penalties

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including fines or imprisonment. In addition, Shariah allows for compensatory damages, but strictly limits them to actual, verifiable losses. Claims for speculative or future income, such as opportunity costs, are prohibited, as they may amount to *ribā* (usury), which is categorically forbidden in Islamic law. Beyond criminal liability, Malkawi (2013) also highlights the obligation of the infringer to compensate the rightful owner for damages incurred. Although neither the Quran nor *Sunnah* explicitly address compensation for IP disputes, broader Shariah principles emphasise the prevention of harm (*darʾ al-mafāsid*) and the necessity of restitution *(ijbār al-ḍarar*). This principle is supported by the hadith of the Prophet Muhammad (PBUH), which underscores the obligation to restore harm or loss inflicted upon others.

لَا ضَرَرَ وَلَا ضِرَارَ

There should be neither harming nor reciprocating harm.
Reported by al-Hakim 2345 (al-Khattab, 2007)

Therefore, under Shariah, IPR violations are considered wrongful acts that require both punitive and compensatory responses to uphold justice and promote ethical economic conduct. In parallel, the principle of *khiyānah* (breach of trust) plays a crucial role in IPR-related violations. Broadly defined, *khiyānah* entails the failure to honour commitments or protect entrusted responsibilities (Marwing, 2021). In the IPR context, it particularly pertains to the misappropriation of trade secrets. These confidential business assets possess commercial value due to their exclusivity and are often protected through nondisclosure agreements or internal confidentiality protocols. Any unauthorised disclosure or misuse of such information constitutes *khiyānah* and undermines fair commercial practice (World Intellectual Property Organization, n.d.). Moreover, once a trade secret becomes publicly disclosed, its legal protection is forfeited, underscoring the necessity of maintaining strict confidentiality measures (Malkawi, 2013).

Within the fashion industry, trade secrets hold substantial economic significance. Businesses frequently protect proprietary information such as supply chain details, buyer lists, design software, and optimised logistics strategies (World Intellectual Property Organization, 2005). Therefore, safeguarding such information is vital for ensuring sustained innovation, operational efficiency, and market competitiveness.

Accordingly, the framework for IPR remedies reflects a nuanced balance between ethical justice and economic pragmatism. By classifying IPR infringement under *taʿzīr*, Islamic law permits flexible, case-specific penalties proportional to the gravity of the violation. At the same time, the prohibition of *ribā* restricts excessive compensation, preserving fairness in commercial transactions. The recognition of *khiyānah* in cases of trade secret misappropriation further fortifies the Islamic legal position on protecting intellectual assets. Particularly in sectors such as fashion, where creativity and confidentiality are core to commercial success, these principles serve as essential mechanisms for supporting innovation and ethical business practices.

Intellectual Property Rights in Malaysia's Islamic Fashion Industry

Malaysia's legal system is primarily based on federal statutes, while also integrating aspects of Islamic and customary laws, as codified in the Federal Constitution of 1957 (FC). The FC grants jurisdiction over most legal matters to the federal government, whereas Islamic law falls under the purview of state governments in relation to religious offences and personal status. Given Malaysia's multicultural and multi-religious demographic, where Islam is constitutionally recognised as the religion of the federation and Muslims constitute over 60% of the population, according to 2016 data from the Department of Statistics Malaysia, it becomes imperative to examine Islam's perspective on business ethics and anti-counterfeiting strategies (Mohamed, 2018).

According to Mohamed (2018), Malaysia's legal framework, in congruence with Islamic principles, strictly prohibits counterfeit trade. The research argues that enhancing public awareness is a critical component in curbing counterfeiting, as legally and religiously informed consumers are less likely to purchase counterfeit goods. Furthermore, she emphasises that strong legal enforcement is

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essential in deterring infringers; harsher penalties increase the perceived risk, thereby discouraging production and distribution of fake goods. Additionally, she contends that suppressing the availability of counterfeit products could shift consumer demand towards genuine items, potentially prompting premium brands to adopt more inclusive pricing strategies. Ultimately, she advocates for a coordinated effort involving legal authorities, regulatory bodies, and industry actors to promote both ethical commerce and economic sustainability.

In light of this, IPRs assume a pivotal role in Malaysia's Islamic fashion industry, where originality in design, branding, and trademark integrity is crucial for maintaining consumer confidence and product authenticity. According to the research of Aris et al. (2018), a disconnect exists between the marketing strategies used by Islamic fashion designers and the religious standards they claim to follow. Although these garments are promoted as Islamic, inadequate understanding of proper Islamic dress codes often results in designs that deviate from Quranic and Prophetic standards. This divergence raises concerns of misrepresentation and misleading branding, which could be addressed through stricter trademark enforcement and certification mechanisms to verify religious compliance. The Islamic Fashion Festival 2024 exemplifies how Islamic fashion can innovate while remaining grounded in its ethical foundations. By reinterpreting modesty in creative ways, the festival illustrated that Islamic fashion could bridge traditional values and contemporary tastes. Furthermore, it demonstrated how fashion can serve as a medium for cross-cultural engagement and cultural preservation, reinforcing Islamic identity in a globalised market (Mohamad, 2024).

In the context of Malaysia's fashion industry, adherence to Islamic ethical principles is essential, particularly through the process of halal certification in product design and manufacturing. This certification is vital for ensuring that apparel, textiles, and lifestyle goods are in accordance with Shariah principles. It involves extensive evaluations of the raw materials, production processes, and final products to confirm compliance. This is especially crucial for leather-based items, such as belts, shoes, and handbags, as well as household products like upholstered furniture. Halal certification not only guarantees religious conformity but also enhances consumer trust and improves marketability in regions with a significant Muslim population (Malaysian Investment Development Authority, n.d).

Furthermore, contemporary controversies demonstrate the increasing relevance of IPR in Malaysia's Islamic fashion domain. For instance, the case involving Qistina Adi, founder of a well-known headscarf brand, ignited public backlash after she asserted copyright over an 'L'-shaped hijab design. In her subsequent apology, she clarified that the copyright applied only to the precise measurements of her 'Qisthenadi' square shawl, not all similarly shaped designs. Nevertheless, her original claims were perceived as overly expensive, drawing criticism for attempting to monopolise a common design format. This incident underscores how ambiguous or overly restrictive IP claims can undermine brand credibility and elicit consumer resistance (Aimie, 2024).

Equally significant, the launch of the Nike Pro Hijab in December 2017 highlights how global brands can influence Islamic fashion through innovation and robust IPR protections. Developed to accommodate the unique needs of female Muslim athletes, the Nike Pro Hijab offered a breathable, performance-optimised alternative to conventional hijab designs. Prior to its introduction, athletes such as Olympic fencer Ibtihaj Muhammad reported discomfort and hearing impairment due to ill-suited hijab alternatives. Nike addressed these issues by developing a single-layer Pro mesh fabric prototype that prioritised functionality without compromising modesty. This case exemplifies how IPR frameworks can incentivise innovation in Islamic fashion while reinforcing religious observance (Cheney, 2024). Likewise, plagiarism remains a persistent challenge in the Malaysian Islamic fashion industry. In 2020, The Sun Daily reported allegations involving a local businesswoman accused of copying a scarf design originally created by a model and visual artist in collaboration with a modest-wear brand. The artist substantiated her claim by publicly sharing side-by-side comparisons, arguing that the similarity constituted copyright infringement. The accused designer denied the allegations, asserting independent development and prior use of the design. This dispute illustrates the evidentiary challenges in establishing originality and ownership within creative industries (Mohanakrishnan, 2020).

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A landmark Malaysian case law demonstrates the judiciary's role in enforcing IPRs within the fashion sector. In *Siti Khadijah Apparel Sdn Bhd v. Ariani Textiles & Manufacturing (M) Sdn Bhd* [2019] 7 MLJ 478, the issue concerned whether the plaintiff's *telekung* (prayer veil) qualified as a 'graphic work' or a 'work of artistic craftsmanship' under the Copyright Act 1987. The defendant contended that the design was derived from a commonly available utilitarian form. However, the court held that the unique features of the *telekung,* including its aesthetic and functional design elements, warranted copyright protection due to its distinctive contribution to wearer comfort and elegance.

In the case of *Airaz Technologies Sdn Bhd v. Padzilah bt Enda & Anor* [2024] 10 MLJ 277, the plaintiff challenged the validity of three registered industrial designs, 'Moden 1', 'Moden 2', and 'Harmoni', which were marketed under the Siti Khadijah brand. The plaintiff claimed that these designs lacked novelty and infringed upon their product, the *Telekung Suqainah Lite.* The court, referencing Section 32(2) of the Industrial Designs Act 1996, conducted a visual comparison and concluded that the plaintiff's product had indeed copied the essential features of the defendants' design, particularly noting the distinctive face-opening structure of the 'Harmoni'. As a result, the court upheld the validity of the registered designs, granted injunctive relief, and awarded remedies that included damages and disgorgement of profits under Sections 32, 33(1), and 35 of the relevant legislation.

Moreover, recent social media-driven controversies also illustrate the volatility of IP disputes in the fashion sector. As reported by Tan (2020), dUCk was accused of copying Bokitta's magnetic hijab pins and faced allegations of copying Ilham Echenta's turban design. While design similarities may exist, proving legal infringement requires a threshold of substantial similarity as well as intent to copy. Another case involving Christy Ng drew attention after she released a handbag design that closely resembled Bottega Veneta's 'The Pouch'. Though the addition of a strap arguably introduced a differentiating element, critics argued that the resemblance was sufficient to fraudulent imitation.

The Malaysian Islamic fashion industry reflects a growing interface between Islamic ethics, innovation, and IPR protection. Through a combination of judicial enforcement, halal certification, consumer awareness, and legal remedies for infringement, Malaysia has developed a complex yet evolving framework to support ethical creativity within a Shariah-compliant structure. However, ongoing challenges related to misrepresentation, plagiarism, and ambiguous claims highlight the need for continuous legal refinement and stakeholder education to ensure the sustainable and principled development in the industry.

Harmonising Legal Mechanisms within Islamic and Civil Intellectual Property Rights Frameworks in Malaysia

While Shariah law does not prescribe *ḥadd* punishments for IP violations, it places significant emphasis on restorative justice and fair compensation. Within this context, the principle of *diyah* (compensatory damages), traditionally applied in cases of physical harm, may be analogically extended to IPR disputes, requiring infringers to compensate original creators for the financial losses incurred. The prevailing scholarly consensus classifies IP violations under the category of *taʿzīr*, which grants judicial authorities the discretion to impose appropriate sanctions. This flexibility enables the application of proportionate remedies such as fines, injunctions, or other corrective measures, depending on the gravity of the offence. Such an approach aligns with Islamic legal principles of justice, equity, and public interest, while also offering a practical response to modern enforcement challenges within the realm of IP.

In the Malaysian context, the enforcement of IPRs within the fashion industry is primarily shaped by four key statutes. The Industrial Designs Act 1996 offers protection for visually distinctive elements, such as hijab styles and swimwear designs, through a formal registration system. The Copyright Act 1987 provides automatic protection for original artistic expressions, including traditional garments and patterned shawls. The Trademarks Act 2019 secures brand identity by safeguarding names, logos, and symbols used in the marketplace. Although less commonly applied in the fashion sector, the Patents Act 1983 extends to technological innovations, such as performance-enhancing fabrics and advanced manufacturing techniques (Aziz & Kamaruzaman, 2024).

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Collectively, these legal instruments afford both civil and criminal remedies, including injunctions, financial compensation, and imprisonment upon conviction for infringement.

In addition, counterfeiting and other forms of IP misconduct within the Islamic fashion industry necessitate a comprehensive approach that integrates legal enforcement with ethical standards rooted in Islamic jurisprudence. Historically, Islam has prioritised consumer protection through institutions such as the *ḥisbah*, which functioned to regulate market behaviour and uphold public morality. Within this framework, the replication of another producer's design or the use of deceptive branding may constitute elements of *gharar* (prohibited uncertainty) or *khiyānah*. While classical *fiqh* does not provide direct regulation for contemporary forms of unfair competition, Islamic legal ethics unequivocally condemn deceitful commercial practices and misrepresentation (Azmi, 1995).

Further, Meirison and Nazar (2021) clarify that IPRs encompass both moral and economic dimensions, each bearing distinct implications when assigned or licensed. Innovators and designers carry an ethical obligation to ensure their legal entitlements align with the overarching objectives of Shariah, particularly the *maqāṣid al-sharīʿah*, which include the *ḥifẓ al-māl* and *ḥifẓ al-ʿaql* (protection of intellect). Accordingly, while the recognition of individual rights remains essential, these must be reconciled with the broader interests of society. Regulatory vigilance and proactive government oversight are equally vital in curtailing abuses and ensuring fair enforcement. In Islamic thought, the ownership of intellectual creations is not absolute but conditional upon their contribution to both private entitlements and public welfare.

Furthermore, Busu et al. (2021) argue that the unauthorised use or misappropriation of IP inflicts significant harm, a concern also recognised in Islamic legal sources. The issue becomes particularly acute when creators are deprived of legal protection, resulting in economic hardship and financial loss. Beyond individual detriment, the unregulated exploitation of academic research, scientific advancements, and artistic innovations generates long-term adverse consequences for society at large. In this regard, Mohamed (2018) highlights that educating consumers on both legal and Islamic principles can help curb the demand for counterfeit goods. Enhanced consumer awareness fosters preference for authentic products, thereby encouraging producers to maintain competitive pricing. Given that commercial transactions constitute an integral aspect of daily life, Islam underscores the necessity for all trade activities to be conducted in accordance with established ethical and legal principles.

Significantly, Dr Ali Ahmed Mashael, the Grand Mufti at the Department of Islamic Affairs and Charitable Activities in Dubai, has affirmed the Islamic legitimacy of IPRs. He cites a fatwa (a non-binding legal opinion or ruling on a point of Shariah) issued by the Islamic *Fiqh* Academy (IFA) of the Organisation of Islamic Cooperation (OIC), which holds that trademarks, patents, and copyrights constitute legitimate forms of property under Shariah. According to this fatwa, owners have the right to protect their creations and to license or sell these rights for compensation. This position affirms that infringing upon IPRs is forbidden (*ḥarām*) and that such rights are protected under both civil and Shariah-based legal systems (Sadafy, 2014).

However, integrating emerging IPR categories, such as patents for genetic technologies, software algorithms, or stem cell innovations, into Shariah jurisprudence poses interpretive challenges. Although Islamic law is inherently dynamic and capable of adapting to technological progress, nuanced jurisprudential reasoning is required to ensure that such categories remain consistent with Islamic ethical frameworks. The evolving nature of IPRs demands a careful evaluative approach that preserves the foundational values of Islamic law while accommodating modern developments (Malkawi, 2013).

At this juncture, it is submitted that harmonising Malaysia's dual legal system to incorporate both civil and Islamic perspectives on IPR enforcement is not only desirable but also necessary. While Malaysia maintains a comprehensive civil legal framework for IP enforcement, integrating Shariah-based ethics, particularly in counterfeiting prevention, consumer protection, and corporate responsibility would enhance both legal effectiveness and moral legitimacy. The principle of *ḥisbah* could provide a model for ethical regulation, promoting market integrity and deterring commercial misconduct. Furthermore, the use of Islamic dispute resolution mechanisms, such as *taḥkīm*

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(arbitration), could offer an alternative, culturally attuned pathways for resolving IPR disputes, especially within the fashion sector.

Nonetheless, Malaysia's courts, both civil and Shariah, have not yet developed a jurisprudential foundation in which IPRs are interpreted or enforced directly through Islamic law. As stipulated in the Ninth Schedule of FC, the jurisdiction of Shariah courts is limited to personal and religious matters, thereby excluding commercial disputes, including IPR claims. Consequently, all statutory IP protections are currently adjudicated in civil courts under secular laws, namely the Copyright Act 1987, the Trademarks Act 2019, and the Patents Act 1983. These statutes comply with international instruments such as the Agreement on Trade-Related Aspects of Intellectual Property Rights.

From an analytical perspective, while Malaysia is a Muslim-majority nation with a dual legal system, its IPR regime operates solely within a secular statutory framework. No reported case has invoked Shariah principles to interpret IP as *māl* under *fiqh* or to frame infringement as a breach of Islamic ethics. Even in disputes involving explicitly Islamic content such as hijab designs, religious song lyrics, or halal-branded products, Shariah law has not been used as a supplementary legal or moral argument. Moreover, despite the religious sensitivity of certain fashion-related IP cases, Malaysian courts consistently adopt a technical and statutory approach. To date, Malaysia's National Fatwa Council and state muftis have not issued formal *fatāwā* declaring IPRs as *māl* or condemning IP infringement as impermissible under Islamic law.

Recent Islamic legal discourse has largely focused on financial matters, such as *ribā*, *gharar*, cryptocurrency, and consumer rights, while offering limited engagement with contemporary issues of copyright, trademarks, or patents. This analytical omission highlights a significant gap in the development of comprehensive Islamic normative guidance on IP in Malaysia. Despite the clear conceptual alignment between IPRs and established Islamic legal principles such as *muʾallif* (authorship), *milkiyyah* (ownership), and *amānah* (trust), a Shariah-based framework for IP protection has yet to be formally institutionalised or recognised within judicial practice.

Bridging the divide between Malaysia's civil and Islamic legal traditions calls for a deliberate and collaborative effort to construct a unified and ethically grounded IPR framework. Integrating Islamic commercial ethics into the existing statutory regime, together with the promotion of Shariah-compliant dispute resolution mechanisms, would allow Malaysia to enhance its IP governance in a manner that reflects its socio-religious context. Such harmonisation not only strengthens legal enforcement but also fosters greater public confidence by aligning the protection of creative works with both legal justice and spiritual accountability.

CONCLUSION

This research explores the complex interactions between *fiqh* and IPRs, specifically regarding their legal and ethical impacts on Malaysia's Islamic fashion sector. The analysis indicates that while Shariah does not specifically define contemporary IPR frameworks, its core principles, such as *ḥifẓ al-māl*, *amānah*, and *maṣlaḥah mursalah* form a strong ethical foundation that supports and may even necessitate the safeguarding of intellectual contributions. In this context, *ibtikār*, and authorship are recognised as valid forms of property that warrant both legal acknowledgment and moral appreciation.

From the perspective of Malaysia laws, IPRs are adequately governed by civil statutes and supported by institutional frameworks. However, a significant gap exists in how Islamic legal principles are incorporated into the current IPR enforcement mechanisms. Despite Malaysia's dual legal system and its identity as a predominantly Muslim nation, the application of *fiqh* is largely missing from intellectual property adjudications and legal interpretations. The lack of judicial or fatwa acknowledgment of IP as *māl* within Islamic law signals a lost opportunity to reconcile religious ethics with legal practices.

As Malaysia's Islamic fashion industry expands, it serves as a vibrant channel for cultural expression and economic growth while encountering notable legal hurdles, especially concerning IPRs. Case studies illustrate the importance of copyright, industrial design, branding, and originality

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in fostering ethical business operations and preserving consumer trust. They also reveal significant shortcomings within the current legal framework, particularly in resolving conflicts that intersect with faith, creativity, and commercial interests. This highlights the pressing need for a cohesive legal strategy that merges the procedural reliability of civil law with the moral principles of Shariah. Such an integrated approach would not only enhance legal consistency but also build public confidence, especially among Muslim communities, by ensuring that their creative rights are honoured legally and morally.

To achieve this, integrating Islamic methods of dispute resolution like *taḥkīm*, based on *ḥisbah* principles (which involve market regulation and ethical oversight), along with promoting awareness of Shariah-compliant IPR protections, could lead to a more culturally attuned and ethically sound IP regime in Malaysia. Ultimately, the insights gained from this research establish that *fiqh* can harmonise with the protection of IP. When thoughtfully applied, it provides significant insight for attaining equitable and sustainable legal resolutions. For Malaysia, the future lies in bridging gaps across legal, commercial, and religious domains, ensuring that innovation and authorship within the Islamic fashion industry are legally respected and ethically upheld in accordance with both divine guidelines and statutory law.

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CONFLICT OF INTEREST

The author declares that there is no conflict of interest with respect to the authorship, research, or publication of this article.

AUTHOR'S CONTRIBUTIONS

This research was solely authored by Suriyati Salim. The central research idea was conceived and developed, the theoretical and methodological framework formulated, and the legal and doctrinal analysis was undertaken. The manuscript was drafted, revised, and finalised for submission by the author.

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