

Crime of Assault on Industrial Designs - A Jurisprudential Study and Its Impact on the Economy

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ABSTRACT

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The research aimed to define industrial designs from an Islamic jurisprudential perspective, and the penalty for assaulting industrial designs, and to clarify the effects of that from both the Sharia and legal perspectives. The study was based on the descriptive method and relied within that framework on the analytical approach, yielding several results; among the most prominent are the following: Industrial design is a strategic process for solving problems that stimulates innovation, leads to commercial success, and improves life through innovative products, devices, and experiences. The industrial design process consists of the following: designing the shape, forming the pattern or color, and integrating the pattern and color within a three-dimensional shape with aesthetic value. The Hague Agreement Concerning the International Deposit of Industrial Designs serves as a source for securing ownership of industrial designs. The means of proving this crime include inspection, expertise, testimony and confession, documentary evidence, circumstantial evidence, oath, and others. The assault on industrial designs is criminalised; as industrial design rights are part of intellectual property rights, classified as a patent, and are a legally protected right under Sharia as legitimate property and their rooting falls within the scope of general benefits. One of the goals of sustainable development in the Kingdom of Saudi Arabia is to adopt industries with good designs, which has an impact on improving production levels. Saudi law considers industrial designs as innovative works in literature, arts, and sciences, and Saudi law punishes those who assault industrial designs with penalties ranging from warning to imprisonment.

Recommendations

The researchers recommend the following:

1. *Respect intellectual rights in all creative fields.*
2. *Promote a culture of protecting the Sharia for all innovations that contain intellectual rights.*

Keywords: Crime - Assault - Industrial Designs - Jurisprudence

INTRODUCTION

Praise be to Allah, as He deserves, and as befits His majesty and great sovereignty, His encompassing mercy, and His abundant blessings, and peace and blessings be upon our master Muhammad, and upon all his family and companions.

Industrial designs are a very special property for the companies and commercial institutions that have created these designs. The law of private property and the rights associated with it are excellently supported by Sharia laws. The Kingdom, like other countries part of the World Trade Organization, strives to curb the crime of assaulting these designs. This research monitors the most important aspects in this regard and sheds light on the set of rights that include innovative creations that take form in the decorative or aesthetic appearance of an object. A design may

consist of three-dimensional elements, such as the shape or surface of the object, and explains the Sharia ruling and the ruling on assaulting it.

Research Problem: The main question of the study can be formulated as follows: What is the reality of the crime of assault on industrial designs, from an Islamic jurisprudential perspective, and what are its elements, penalties, and Causes for Exemption?

Research Objectives

Based on the previous questions, the objectives of the study can be formulated as follows:

- To define industrial designs.
- To establish the jurisprudential basis for industrial designs.
- To detail the penalties for the assault on industrial designs, and their Causes for Exemption.

Research Methodology

The study relies on the inductive method. It involves tracing the issue of the research from the reality of specialized writings that have addressed it through presentation and analysis.

Study Plan: The study consists of an introduction, two topics, a conclusion, and an index:

Introduction: It addresses the study's problem, objectives, significance, methodology, and plan, and includes two topics, a conclusion, and a reference index.

Topic One: Definition of industrial designs.

Topic Two: Penalties for the crime of assaulting industrial designs.

Topic One: Definition of the crime of assaulting industrial designs.

Firstly: Definition of the crime.

In linguistic terms, "crime" is derived from the Arabic term *jurm*, meaning transgression, and *jurm* also signifies sin, with its plural forms being *ajrām* and *jurūm*. In the Hadith it is stated: *"The worst of the Muslims in terms of crime is the one who asks about something that was not forbidden, so that it becomes forbidden because of his inquiry."*

The phrase "tajarrama alayya fulan" means: "Someone falsely accused me of a crime I did not commit.". The criminal is the offender. [4]

Crime is defined in Islamic law as a prohibited act for which Allah has prescribed either a fixed penalty (ḥadd) or a discretionary penalty (ta'zīr). [20] In legal terminology, a crime is defined as a voluntary act prohibited by law for which the perpetrator is subject to criminal penalty. [21].

Secondly: Definition of industrial design as: "A strategic process for solving problems that stimulates innovation, leads to commercial success, and improves life through innovative products, devices, and experiences." [8]

Importance of industrial design: Industrial design connects innovation, technology, research, business, and customers to provide new value and competitive advantage across economic, social, and environmental domains. [9]

Elements of industrial design: The industrial design process consists of designing the shape, forming the pattern or colour, and blending the pattern and colour within a three-dimensional shape that has aesthetic value. [10]

Source of empowering ownership of industrial design

The Hague Agreement Concerning the International Deposit of Industrial Designs serves as a source to secure ownership of industrial designs, and is a treaty administered by WIPO for the international registration of industrial designs. An applicant may submit a single international deposit request to the World Intellectual Property Organization WIPO or to its national office in one of the countries party to the treaty. [11]

Means of Proving the Crime of Assault on Industrial Designs

Among the means of proving this crime, the most important methods recognised by the criminal legislator as means of proving crimes are: inspection, expertise, testimony and confession, documentary evidence, circumstantial evidence, oaths, and others. [6]

Topic Two: Penalties for Assault on Industrial Designs.

Firstly: The Penalty for Assault on Industrial Designs in Islamic Jurisprudence.

Industrial design rights are considered part of intellectual property rights and are classified as patents. They are rights protected under Sharia, where assault on them is prohibited; because they align and conform with Sharia transactions. Any action that predominantly serves an interest, or prevents harm or corruption, is mandated by Sharia, and the designer who has exerted effort in creating his design has the greatest right to it, whether in terms of the material aspect: which is the material benefit derived from his work, or the moral aspect: which is attributing the work to him. This right remains purely and perpetually his. [3] And the Sharia rulings came to realise interests and prevent harms, and preserving the rights of the industrial designer holds significant benefits for science, society, and the author; because preserving the rights of authors encourages thinkers and scholars, and neglecting them could lead to a diversion from creativity. The principle of blocking the means necessitates considering the financial aspect of these rights due to the severe corruption and disruption of public interests they cause when invalidated, and they are considered legitimate by Sharia. [7]

Accordingly, it is not permissible to assault it without permission, provided that it does not cause harm to the community or the nation, and that it does not violate the rules and principles of Sharia. [12] [13] and the Prophet Muhammad (peace be upon him) said: "Your blood, your property, and your honour are sacred among you, as sacred as this day of yours, in this month of yours, in this country of yours." [15]

Secondly: Penalties for Assault on Industrial Designs in Saudi Law

In Saudi law: Industrial designs fall under the innovative works in literature, arts, sciences, and applied arts, whether artisanal or industrial.

The penalties are as follows

Firstly: Anyone who violates any provision of this law shall be subject to one or more of the following penalties:

1. Warning.
2. A financial penalty not exceeding two hundred and fifty thousand Riyals.
3. Closure of the offending establishment or one that contributed to the assault on the copyright for a period not exceeding two months.
4. Confiscation of all copies of the work, as well as the materials designated or used in committing the infringement on the copyright.
5. Imprisonment for a period not exceeding six months.

Secondly: In the event of a repeat offence against the same work or others, it is permissible to double the maximum penalty, fine, and closure.

Thirdly: If the committee deems that the violation warrants a prison sentence or a financial penalty exceeding one hundred thousand Riyals or requires the cancellation of the license, the matter shall be escalated to the minister for referral to the Board of Grievances.

Fourthly: The committee may decide on financial compensation for the copyright holder who is the victim of the assault and who has filed the complaint; the compensation shall be proportionate to the scale of the assault and the damage incurred.

Fifthly: The committee may include in its decision a penalty of defamation against the aggressor, with publication at his expense and in the manner the committee deems appropriate.

Sixthly: The committee may include in its decision the suspension of the offending establishment's participation in activities or events or exhibitions if the violation is detected at a commercial event, provided that the suspension period does not exceed two years.

Seventhly: The committee may issue a provisional decision to stop the printing, production, publication, or distribution of the assaulted work, and to carry out a provisional attachment of the copies, materials, and images derived from it, or to take any temporary measure it deems necessary to protect the copyright, pending the final resolution of the complaint or grievance.

The executive regulations shall specify the procedures for provisional attachment. [14] It may be appropriate in the coming periods to expand the use of technology to support this field (Ahmed, Alharbi, & Elfeky, 2022; Elbyaly & Elfeky, 2023a, 2023c, 2023e, 2023f, 2023g, 2023h, 2023i; A. Elfeky, 2017; A. I. M. Elfeky & Elbyaly, 2016, 2019, 2023a, 2023b, 2023c, 2023e, 2023f, 2023g; A. I. M. Elfeky, Najmi, & Elbyaly, 2023, 2024a, 2024b; Elfekyand, 2016; Masada, 2017; Masadeh & Elfeky, 2016).

Causes for Exemption of the Crime of Assault on Industrial Designs

There are four Causes for Exemption of the penalty for this crime in Islamic jurisprudence: death, repentance, pardon, and limitation, while in statutory law, the Causes for Exemption of the penalty are three: the death of the convicted person, pardon, and limitation. However, financial penalties do not lapse upon the death of the perpetrator, as the financial penalty is claimed from his estate. [4]

Impact of the Crime of Assault on Industrial Designs on the Economy and Sustainable Development

It is known that preserving copyright rights encourages thinkers and scholars, leads to increased production and economic growth, and stimulates creativity, which is the goal of sustainable development. Sustainable development is concerned with ensuring that Saudi industries are based on good designs, which significantly impacts the level of production by adopting the best means to achieve investment. [5]

CONCLUSION

The study has reached several findings; the most prominent are

1. Industrial design is a strategic process for solving problems that stimulates innovation, leads to commercial success, and improves life through innovative products, devices, and experiences.
2. The industrial design process consists of designing the shape, forming the pattern or color, and blending the pattern and color within a three-dimensional shape that has aesthetic value.
3. The Hague Agreement Concerning the International Deposit of Industrial Designs serves as a source to secure ownership of industrial designs.
4. Means of proving the crime of assault on industrial designs include inspection, expertise, testimony and confession, documentary evidence, circumstantial evidence, oaths, and others.
5. Assault on industrial designs is criminalised; because industrial design rights are part of intellectual property rights.
6. Industrial designs are classified as patents and are a right protected under Sharia, deemed legitimate property, and their establishment is considered part of the general interests. They are also one of the goals of sustainable development in the Kingdom of Saudi Arabia, supporting industries with good designs, which significantly impacts the level of production.
7. Saudi law considers industrial designs as innovative works in literature, arts, and sciences.
8. Saudi law penalizes those who assault industrial designs with penalties ranging from a warning to imprisonment.

RECOMMENDATIONS

The researchers recommend the following

1. Respect intellectual rights in all creative fields.
2. Promote a culture of protecting the Sharia for all innovations that contain intellectual rights.

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