



Intellectual Property Rights (IPR) Endowment

Septina¹, Suhairi Yusuf²

¹ Faculty of Economics, Raden Intan Lampung State Islamic University, Indonesia. E-mail: septina200399@gmail.com

² Faculty of Economics, Raden Intan Lampung State Islamic University, Indonesia. E-mail: suhairi@metrouniv.ac.id

Abstract: *Intellectual Property Rights (IPR) Waqf is an innovative legal breakthrough in the management of intangible assets for social interests and sustainable development. In Indonesia, the potential of IPR in encouraging community creativity and innovation has not been optimally utilized, even though it has been protected by laws and regulations. With the presence of Law Number 41 of 2004 concerning Waqf, the scope of waqf has been expanded to include intangible objects such as IPR, including copyrights, patents, trademarks, and others. The use of IPR through the waqf mechanism allows the results of this intellectual property to be used for strategic sectors such as education, health, and the creative economy. Although there is still debate regarding the validity of immaterial waqf objects, clear regulatory arrangements and institutional support are key to the implementation of IPR waqf. With transparent and accountable management, IPR waqf can be a strategic instrument in strengthening an innovation-based economy and improving community welfare in a sustainable manner.*

Keywords: *Waqf, Intellectual property.*

Introduction

In Indonesia, IPR is one of the most important aspects in supporting innovation and creativity in society, whether in the fields of art, technology, or knowledge. However, despite its importance, there is still a lot of intellectual property that is not optimally utilized, even neglected after being recorded and protected by the state. Waqf as one of the legal instruments that is widely known in Islamic society can be a solution to maximize the potential of IPR. IPR Waqf allows intellectual property owners to donate their rights so that the results of the intellectual property can be used for social or charitable interests. (Sinaga 2020)

The latest regulation on endowments in Indonesia is Law Number 41 of 2004 concerning Endowments and has been in effect since October 27, 2004. With the

presence of Law. No. 41 of 2004, the scope of endowments which had previously been limited to endowments of material objects has expanded to include immaterial objects such as Intellectual Property Rights. Intellectual Property Rights (IPR) or often referred to as Intellectual Property Rights (HMI), often also directly referred to as Intellectual Property Rights (HKI), are the basic equivalent of the English Intellectual Property Rights (IPR). Substantially, the definition of IPR can be described as the right to property that arises or is born from human intellectual ability.¹ Intellectual Property Rights (IPR) are one of the movable assets that can be endowed as stated in Article 16 paragraph 3 of Law. No. 41 of 2004 concerning Endowments. The expansion of the scope of endowments to include immaterial objects is a legal reform. The controversy over what property can be donated is closely related to the differences in views of each fuqaha in defining al-maal (property). (Hendrik and Mufidah 2019).

Since it was enacted on October 27, 2004 until now, there has often been debate or bias about the validity of waqf objects as stated in Article 16 of Law No. 41 of 2004. The article explains that waqf assets consist of immovable and movable objects, the movable objects referred to are assets that cannot be used up due to consumption which include money, precious metals, securities, vehicles, intellectual property rights, lease rights, and other movable objects in accordance with sharia provisions and applicable laws and regulations. (Extract 2006).

IPR waqf allows intellectual property owners to donate their rights so that the results of the intellectual property can be used for social or charitable purposes. Clear regulatory arrangements and support from the government and related institutions are essential to create an adequate legal framework to regulate the IPR waqf process. Thus, the great potential in intellectual property can be managed effectively and beneficially for broader social interests, support the progress of innovation, and strengthen a sustainable creative and cultural economy.

Theoretical Basis

Waqf is the giving of an object or property for social or charitable purposes that cannot be transferred or inherited, with the proceeds being used for the benefit of the community. Waqf is one of the acts of worship that is prescribed in Islam because it does not only have one dimension. Waqf has several dimensions at once, namely social, economic and religious dimensions. When viewed from the perspective of social function, waqf is an effort to form the character and personality of a Muslim to be able to sincerely give up some of his wealth which he has desired for the welfare of fellow human beings. (Qodariah Barkah et al. 2020).

Waqf is also a high-value development investment, because the wakif (the person who donates his property) does not take into account the time and material benefits that should be obtained if he does not donate his property. The existence of

waqf assets in the form of capital, land, buildings and facilities that can increase the prosperity of the community. Waqf assets can be managed productively by Nazhir so that they can help maukuf alaih, one of which is the community to meet their living needs and automatically if their living needs are met, welfare will increase.

Waqf can also reach intangible assets, one of which is Intellectual Property Rights (IPR) which is a form of intangible assets as a result of human thought. Intellectual property rights (IPR) are rights granted to individuals or entities as an appreciation for the results of intellectual creations or works, such as copyrights, patents, trademarks, and industrial designs. Thus, IPR waqf means the use of intellectual property as an object of waqf for purposes that are beneficial to the wider community.(Lubis 2020).

IPR is classified as a type of movable waqf property other than money, which in the Waqf Law Article 21 stipulates that it can be waqfed as long as it does not conflict with sharia principles. The recognition of IPR as an object of waqf is something new in waqf in Indonesia. There are still many people who are still unsure about whether or not waqf with an object in the form of IPR is permissible. This is the basis for the lack of many waqf practices with IPR waqf objects. Waqf with IPR objects can be implemented in Indonesia because normatively there is a legal basis in the form of Waqf laws that have been in effect since 2004. However, further studies are needed regarding the concept of implementing IPR in Indonesia as an object of waqf, especially those related to potential, mechanisms, administrative arrangements, and utilization and application so that it can have an impact on increasing economic growth.(Simatupang 2017).

Intellectual Property Rights (IPR) Endowment is a form of endowment that utilizes intellectual property, such as copyright, patents, trademarks, or industrial designs, as endowment objects for social and humanitarian purposes. In this concept, IPR owners hand over their rights to be used sustainably, with the proceeds from the use or licensing of the intellectual property being channeled to charitable activities or the interests of the general public. Thus, IPR endowment allows intellectual property owners to provide long-term social benefits without losing ownership of their rights.(Aqbar, Herman, and Arsan 2022).

Intellectual property owners, through HAKI waqf, can donate the rights they own, such as copyright on works of art or literature, patents on technological inventions, or trademarks that have high economic value. Although the intellectual property rights remain legally owned by the owners, the proceeds from the use or licensing of the intellectual property will be used for desired social and charitable purposes. This allows HAKI owners to contribute to the welfare of society without having to lose ownership rights to their intellectual property.(Yoyo Arifardhani and MM 2020).

Research Methodology

The research applied in this study is the library method, which involves collecting scientific papers or data from various sources for research purposes. Data collection is carried out through the library method, which is a technique that collects data from journals, articles, books, magazines, newspapers, and other sources of information. This research approach involves collecting data from various sources and then analyzing the conclusions generated from each of these literatures, which are then used as reference sources for the analysis in this study.(Zed 2014).

Results and Discussion

1. Legal Basis for Endowment of Intellectual Property Rights (IPR)

a. According to the Law

The IPR listed in the Waqf Law Article 16 above is explained in its category in PP No. 0.42 of 2006 Article 21 point b that movable objects other than money that can be donated in the IPR category are: 1) Copyright, 2) trademark rights, 3) patent rights, 4) industrial design rights, 5) trade secret rights, 6) integrated circuit rights, 7) plant variety protection rights, and/or 8) other rights.

The transfer of intellectual property rights by way of endowment has been regulated in each of the laws concerning intellectual property rights, as below.(Ministry of Religion of the Republic of Indonesia 2004):

- 1) Copyright is in the form of intangible movable property.¹⁰⁷ Copyright can be transferred or assigned in whole or in part due to inheritance, grant, endowment, will, written agreement or other reasons permitted in accordance with the provisions of laws and regulations.
- 2) Patent rights may be transferred or assigned due to inheritance, grant, will, endowment, written agreement or other reasons permitted in accordance with the provisions of laws and regulations. The transfer of rights does not remove the inventor's right to have his name and identity included in the Patent certificate.
- 3) Rights to a registered trademark may be transferred or assigned due to inheritance, will, endowment, gift, written agreement or other reasons permitted in accordance with the provisions of laws and regulations.
- 4) Plant Variety Protection Rights can be transferred or assigned due to inheritance, grant, will, endowment, written agreement or other reasons that are justified in accordance with the provisions of laws and regulations. The transfer of PVT rights does not eliminate the breeder's right to continue to include their name and other identities in the relevant PVT rights certificate.
- 5) Trade Secret Rights may be transferred or assigned in whole or in part due to inheritance, grant, will, written agreement or other reasons permitted in accordance with the provisions of laws and regulations.
- 6) Industrial Design Rights may be transferred or assigned by inheritance, grant, will, written agreement or other reasons permitted in accordance with the

provisions of laws and regulations. The transfer of Industrial Design Rights does not eliminate the designer's right to have his/her name and identity listed in the Industrial Design certificate, the Official Industrial Design Gazette or in the General Register of Industrial Designs.

- 7) The right to an Integrated Circuit Layout Design may be transferred or assigned by inheritance, grant, will, written agreement or other reasons permitted in accordance with the provisions of laws and regulations. The transfer of the right to an Integrated Circuit Layout Design does not eliminate the designer's right to have his/her name and identity listed in the Integrated Circuit Layout Design certificate, the Official News of Integrated Circuit Layout Design or in the General List of Integrated Circuit Layout Designs.

Based on the description above, every HAKI law, whether written or implied, includes waqf as one form of transfer of such assets. In the three types of IPR above, namely copyright, trademark, patent, it is expressly stated that the solid is transferred by way of endowment or, the transfer of rights by way of endowment is conveyed with the words "in accordance with the provisions of applicable laws and regulations. While the Protection of plant varieties and geographical indications, Trade Secrets, Industrial Designs, Integrated circuit layout designs, are not explained explicitly. The Endowment Law has been enforced in the government in Indonesia since 2004, one of its articles explains that one of the objects of endowment is movable property in the form of IPR. Therefore, when in the IPR legislation it is stated that one form of IPR transfer is in accordance with the provisions of applicable laws and regulations, including the Endowment Law. In the provisions of Government Regulation number 42 of 2006 article 21 concerning endowment objects, all IPR can be used as endowment objects.

In general, the Waqf Law mentions the fields of IPR that can be used as objects of waqf such as copyright, patents and trademarks, as well as trade secrets, industrial designs, plant variety protection and integrated circuit layout designs. In its implementation, there are obstacles in the form of difficulty in determining the economic value of IPR that is used as the object of the waqf. This is because the understanding of IPR is still minimal, in addition to the limited time of protection also affecting. In terms of quantity, economic value is difficult to realize, one example is trade secrets, this is because the inventor is directly attached to the object. In fact, IPR waqf has great potential to advance the welfare of the Indonesian people based on the position of the Republic of Indonesia as a country with a majority of the population embracing Islam as their religion.

- b. According to the Regulation of the Minister of Religion

According to the Regulation of the Minister of Religious Affairs (PERMENAG), HAKI waqf is regulated in the Regulation of the Minister of Religious Affairs Number 6 of 2020 concerning the Arrangement and Management of Waqf. This regulation provides guidance on waqf management, including the concept of waqf in the form of non-physical objects such as Intellectual Property Rights (HAKI). Although it does not directly discuss HAKI waqf, the basic principles

contained in the regulation can be applied to the management of intellectual property as an object of waqf (Sulistiani 2022).

In the regulation, waqf is defined as the transfer of ownership rights to permanent objects, the proceeds of which are used for the benefit of the community. This regulation also regulates the types of objects that can be used as waqf objects, which include land, buildings, money, and other objects that have economic and social value. Thus, in the context of HAKI, although there is no explicit explanation, the concept of HAKI waqf can be included as a form of modern waqf that can provide long-term benefits to the community. (2020 Wedding).

The importance of this regulation is to provide legality for the management of waqf in non-material forms, including IPR, which aims to ensure that the results of the IPR that are donated can be used for social interests, such as education, health, or other social activities. In this case, IPR, such as copyright, patents, or trademarks, can be resources used for charitable purposes without losing ownership rights by the party making the waqf.

The Minister of Religious Affairs Regulation also emphasizes the importance of transparency and accountability in waqf management. This also applies to the management of HAKI waqf, where the waqf management institution or agency must be able to ensure that the benefits obtained from the license or use of HAKI that is donated are used in accordance with the purpose of the waqf. In addition, this regulation stipulates that waqf be managed in a productive and sustainable manner, so that it can provide maximum benefits to the community in the long term.

With this regulation, although specific regulations regarding IPR waqf are still limited, PERMENAG No. 6/2020 provides a legal framework that can be used to manage IPR within the waqf framework. This opens up opportunities to develop the potential of IPR waqf as an instrument that supports socio-economic development, as well as encouraging the community and IPR owners to think more creatively in utilizing their intellectual works for the welfare of the people.

c. According to the Financial Supervisory Agency Regulation

According to the Regulation of the Financial Supervisory Agency (BPK), waqf is not specifically regulated in existing regulations. However, the BPK Regulation related to waqf management provides a basis for supervision related to transparency and accountability in the management of waqf assets, including assets that can be waqf in non-material forms such as Intellectual Property Rights (HAKI). (Ilyas 2021). This regulation regulates how waqf management institutions must carry out their duties in managing waqf assets effectively and in accordance with sharia principles, and ensure that the results of the waqf are used for the benefit of the community in a sustainable manner. (RI 2011).

The BPK Regulation emphasizes the importance of strict supervision of the management of waqf assets to ensure that waqf assets, including non-physical ones such as IPR, can be utilized optimally and provide maximum benefits to the community. In this context, the management of IPR that is donated must be carried out with the same principles, namely transparent, accountable, and

responsible. The results of the license or use of IPR that is donated must be managed for social purposes and the public interest, and not misused by the manager.

In the management of HAKI endowments, it is important to involve institutions that have the ability and integrity to supervise and manage intellectual property in a manner that is in accordance with the objectives of the endowment. Supervision carried out by the BPK will ensure that all activities related to the management of HAKI in endowments are carried out properly, including the use of the proceeds of HAKI that are endowed for social or charitable activities in accordance with existing provisions.

Therefore, although the BPK Regulation does not specifically regulate HAKI waqf, the principles of supervision and management contained in the regulation remain relevant and can be applied to ensure that HAKI waqf management runs well, provides sustainable benefits, and is in accordance with sharia principles and applicable laws.

d. According to the Financial Services Authority Regulation

The Financial Services Authority Regulation (POJK) can play a role in providing a legal basis for the management of financial assets originating from HAKI endowments. For example, in terms of implementing sharia principles in the management of funds or proceeds from HAKI endowments, POJK can provide guidelines related to sharia financial products that can be developed using the proceeds from HAKI that are endowments, such as investment products or funds collected from HAKI licenses for social purposes.(Galuh and Utami 2022).

e. According to the DSN MUI Fatwa

MUI issued MUI Fatwa No.1/ MUNAS/VII/MUI/15/2015 on Protection of Intellectual Property Rights upon request from MIAP (Indonesian Anti-Counterfeiting Society). The fatwa concluded that in Islamic law, Intellectual Property Rights are viewed as property rights and must receive protection like other property rights. Intellectual Property Rights can be used as an object of a contract, whether commercial or non-commercial, donated or inherited, and all forms of violations of Intellectual Property Rights are viewed as a form of injustice, the law of which is forbidden.(Asyari, nd). The fatwa is only binding between the MUI and its muqallid, namely MIAP as the institution requesting the fatwa, so that it is directly bound by what the MUI fatwa has issued. This MUI fatwa does not have a legally binding force in general. The fatwa can have binding force if it is applied continuously in judicial practice or legalized by an institution that has the authority to make the fatwa have binding legal force.

2. Types of Intellectual Property Rights (IPR) Endowments

Intellectual Property Rights (IPR) Endowments can consist of various types of intellectual property that can be endowed by their owners for social and humanitarian purposes. Based on their type, there are several types of IPR that can be endowed. The following are several types of IPR endowments that are common in Indonesia(Hamdan and Saifuddin 2020):

a. Copyright Endowment

Copyright is a right granted to the creator or rights holder of a work of art, such as literature, music, art, and computer software. Copyright endowments allow rights holders to transfer their copyrights for use in charitable or social activities. For example, royalties from the copyright of a song or book can be used to fund education, social activities, or community welfare programs. This is one of the most common forms of IPR endowments in the creative industry.

b. Patent Endowment

A patent is a right granted for a new invention in the field of technology or a product that has an innovation that has not existed before. A patent grants exclusive rights to produce, use, and sell the invention. In the context of waqf, the patent holder can transfer his rights to be used in social projects, such as the development of health technology or community empowerment through technological innovation. For example, royalties from a patent invention in the health sector can be used to fund hospitals or treatment programs for the underprivileged.(Acep Zoni Saeful Mubarak 2020).

c. Trademark Endowment

A trademark is a symbol or sign used to distinguish goods or services produced by one party from another. A registered trademark that has economic value can be used as an object of waqf. Income obtained from the use or license of a waqf trademark can be used for social purposes such as funding education or other social activities. For example, the owner of a well-known trademark can transfer the right to use his/her brand to be distributed to an institution or foundation that focuses on community empowerment programs.

d. Industrial Design Endowment

Industrial design is a right granted over the form, appearance, or visual design of a new and original product. This design can be used for a variety of products, such as household furniture, electronics, or clothing. An industrial design endowment allows the owner of the design to transfer the design rights to a party who can use it for social purposes. For example, proceeds from licensing or using an industrial design can be used to fund community skills training programs or the development of local products that can improve the regional economy.

e. Trade Secret Endowment

A trade secret is information or a formula that has economic value because of its secrecy and provides a competitive advantage. For example, a food recipe, a chemical formula, or a proven profitable manufacturing process. The owner of a trade secret can transfer his rights to be distributed in the form of a waqf, which allows the proceeds from its use or license to be used for social activities, such as funding research or economic empowerment programs for the community.(Auna Nida Ulhusna et al. 2024).

3. Potential for Intellectual Property Rights (IPR) Endowments in Indonesia

The potential for Intellectual Property Rights (IPR) Endowment in Indonesia is very large, considering that Indonesia has a wealth of diverse culture, innovation, and creativity. With the development of the creative economy and knowledge-based

industry, the concept of IPR endowment can be a strategic solution to maximize the economic and social potential of existing intellectual property. By endowing IPR, be it copyright, patent, or trademark, IPR owners not only provide long-term benefits to society but also play a role in the development of vital sectors that require support (Jumena and Dewi 2017).

One of the main potentials of HAKI endowments is empowering the creative economy sector in Indonesia. Indonesia has many creative works, ranging from art, music, design, to literature that can have significant economic value. With HAKI endowments, the results of these creative works can be used to fund art projects, develop art and cultural training centers, or introduce Indonesian works to the global market. In addition, it also provides opportunities for the development of young people's creativity, especially in fields related to art and technology, thereby increasing the creativity-based economy.

In the education sector, HAKI endowments can make a major contribution to the development of quality human resources. The results of the utilization of endowed intellectual property can be used to fund scholarship programs, research, or the development of better educational curricula. This is important to increase access to education for the underprivileged and ensure that Indonesia can compete on the global stage, especially in areas that focus on technology and innovation. (Affandi 2017). Through HAKI endowment, education in Indonesia can become more inclusive and sustainable.

In addition, the health sector can also benefit greatly from the potential of IPR waqf. For example, patents on drugs or medical technologies that are donated can be used to fund the construction of health facilities, medical research, or the development of more affordable medicines. By utilizing IPR through waqf, the results can be used to improve the quality of life of the community, reduce inequality in access to quality health care, and encourage progress in handling health problems in Indonesia.

Another potential of HAKI endowments is to encourage innovation and technological development. In the midst of digital transformation and the industrial revolution 4.0, Indonesia needs more innovation to be able to compete in the global market. With HAKI endowments, intellectual property in the form of patents or innovative technologies can be encouraged to develop further, producing products or solutions that can have a positive impact on society. This will accelerate Indonesia's development in the industrial and technology sectors, as well as facilitate public access to useful technology. (Hadi 2020).

HAKI endowments can play a role in reducing social inequality in Indonesia. Through the utilization of HAKI that is donated, the funds collected can be channeled to social programs that help the less fortunate. Programs such as the construction of schools, hospitals, and other public facilities can be funded through HAKI endowments. This will ensure that the benefits of innovation and creativity can be felt by all levels of society, helping to reduce social inequality and providing more equal opportunities for all Indonesian citizens.

4. Governance of Intellectual Property Rights (IPR) Endowments

Management of IPR in waqf must be carried out by a competent institution, such as the Indonesian Waqf Board (BWI) or other recognized institutions that have the capacity to manage non-physical assets. These institutions are responsible for ensuring that the results of the use of IPR that are donated, such as income from licenses or royalties, are used for purposes that are in accordance with the original intention of the waqf. The managing institution must also maintain transparency in the financial reporting process, as well as ensure that all management is carried out in accordance with sharia principles and applicable laws.(2018 Niswah).

Intellectual Property Rights (IPR) waqf governance refers to how the process of managing endowed intellectual property can be carried out transparently, accountably, and productively, while still paying attention to the social and humanitarian goals that are the core of the waqf itself. Good governance aims to ensure that the benefits of endowed IPR can be received by the community in a sustainable manner, and can be utilized for the public interest such as education, health, or other social development.

In addition, good governance also involves supervision from related parties, such as the Financial Supervisory Agency (BPK) and other authorities, to ensure that the management of IPR in waqf is not misused and can provide long-term benefits. This also includes ensuring that IPR management is carried out professionally, taking into account sustainability factors, both from an economic and social perspective. This governance will help create an ecosystem that supports the development of IPR waqf in Indonesia.(Habibah 2020).

5. Intellectual Property Rights (IPR) Endowment Reporting System in Indonesia

The IPR waqf reporting system in Indonesia serves to ensure transparency and accountability in the management of IPR that has been donated. Good reporting is very important so that all parties, especially the community and authorities, can know the extent of the benefits obtained from the IPR that has been donated. This reporting includes reports on the use of income or royalties obtained from IPR, as well as the management of waqf funds that are distributed for social and humanitarian purposes.

In Indonesia, this reporting can be done by the institution responsible for waqf management, such as the Indonesian Waqf Board (BWI) or other waqf management institutions registered and recognized by the government.(Muntaqo 2015)These institutions must provide regular reports on the results of the utilization of the endowed IPR, and ensure that the funds are used in accordance with applicable provisions. The report must include details of the receipt, use, and allocation of funds, and ensure that the management of IPR is carried out in accordance with sharia principles and applicable laws.

In addition, the reporting system also needs to involve an audit and evaluation process from an independent party, such as an external auditor, to ensure that the management of IPR in waqf is running well and is not misused. Good reporting will increase public trust in the waqf system in Indonesia and encourage more parties to participate in the IPR waqf program. This reporting system is also important to ensure that the management of IPR can provide a significant and sustainable social

impact on the community, in accordance with the main purpose of the waqf itself.(Faisal 2021).

Conclusion

Intellectual Property Rights (IPR) Endowment is an innovative concept and has great potential in supporting socio-economic development in Indonesia. With various types of IPR that can be endowed, such as copyright, patents, trademarks, industrial designs, and trade secrets, its utilization can provide broad benefits to society, especially in the education, health, creative economy, and technology sectors. Transparent governance and an accountable reporting system are essential to ensure that the results of IPR endowment are used productively and in accordance with its social objectives. Therefore, IPR endowment not only plays a role in advancing important sectors, but can also improve people's welfare sustainably and encourage Indonesia's role in an innovation- and creativity-based economy.

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