

AN EXAMINATION OF INTELLECTUAL PROPERTY CONTRACTS FROM AN ISLAMIC VIEWPOINT

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Abstrak

Pemeriksaan Kontrak Kekayaan Intelektual dari sudut pandang Islam menyoroti interaksi yang rumit antara struktur hukum, faktor ekonomi, dan prinsip-prinsip etika. Studi ini menggali sejarah evolusi undang-undang Hak Kekayaan Intelektual (HAKI) di Indonesia, menekankan komitmen negara untuk mendorong inovasi, menarik investasi asing, dan melindungi hak-hak pencipta dan inovator. Konsep wakaf (wakaf) HKI dalam hukum Islam menggarisbawahi potensi pemanfaatan kekayaan intelektual untuk kepentingan masyarakat, dengan menekankan pertimbangan etika. Selain itu, penerapan hukum perjanjian Islam dalam kontrak HKI menggarisbawahi pentingnya keadilan, transparansi, dan saling menguntungkan dalam transaksi bisnis. Tantangan seperti pembajakan, pemalsuan, dan pelanggaran online menimbulkan ancaman terhadap perlindungan HKI yang efektif di Indonesia, sehingga memerlukan upaya penegakan hukum yang kuat dan penerapan etika bisnis ekonomi Islam. Dengan memahami dampak sosial dan ekonomi dari kontrak HKI dalam kerangka Islam, pembuat kebijakan dan pemangku kepentingan dapat mengembangkan strategi yang mendorong inovasi, kreativitas, dan pertumbuhan ekonomi dengan tetap menjunjung standar etika dan prinsip hukum. Studi ini menganjurkan untuk meningkatkan perlindungan HKI, berinvestasi dalam mekanisme penegakan hukum, dan memanfaatkan hukum Islam untuk mengatasi tantangan era digital, mengembangkan lingkungan yang kondusif bagi inovasi, menghormati hak kekayaan intelektual, dan mempromosikan praktik bisnis yang etis untuk pembangunan ekonomi dan kesejahteraan sosial.

Kata Kunci: Pemeriksaan, Kontrak Kekayaan Intelektual, Pandangan Islam

Abstract

The examination of Intellectual Property Contracts from an Islamic viewpoint sheds light on the intricate interplay between legal structures, economic factors, and ethical principles. This study delves into the historical evolution of Intellectual Property Rights (IPR) legislation in Indonesia, emphasizing the nation's commitment to fostering innovation, attracting foreign investment, and safeguarding creators' and innovators' rights. The concept of waqf (endowment) of IPR within Islamic law underscores the potential for utilizing intellectual property for societal benefit, emphasizing ethical considerations. Additionally, the application of Islamic treaty law in IPR contracts underscores the importance of fairness, transparency, and mutual benefit in business transactions. Challenges such as piracy, counterfeiting, and online infringement pose threats to effective IPR protection in Indonesia, necessitating robust enforcement efforts and the application of Islamic economic business ethics. By understanding the social and economic impacts of IPR contracts within an Islamic framework, policymakers and stakeholders can develop strategies that promote innovation, creativity, and economic growth while upholding ethical standards and legal principles. The study advocates for enhancing IPR protection, investing in enforcement mechanisms, and leveraging Islamic law to address digital age challenges, fostering an environment conducive to innovation, respecting intellectual property rights, and promoting ethical business practices for economic development and social welfare.

Keywords: examination, Intellectual Property Contracts, Islamic viewpoint

Introduction

Intellectual property rights (IPR) grant creators exclusive rights over their intellectual works, including copyrights, trademarks, patents, and more. These protections incentivize innovation, safeguard creators' rights, and foster economic growth by allowing commercial use while preventing unauthorized use. IPR also encourages fair competition in the marketplace (Hermawan and Habibi 2020). In Indonesia, historical legislation related to intellectual property rights (IPR) dates back to the 1840s. Even during the Japanese occupation (1942-1945), existing IPR laws remained in effect. (Matompo 2020).

After Indonesia declared independence on August 17, 1945, Dutch colonial laws continued to apply unless they conflicted with the 1945 Constitution. While Copyright Law and Dutch heritage law remained in force, the Patent Law was considered incompatible with the Indonesian government. Under the Dutch Patent Law, patent applications could be filed in Batavia (now Jakarta), but examination occurred at the Octrooiraad in the Netherlands (Geofrey and Roisah 2020).

In 1953, the Indonesian Minister of Justice issued regulations governing patents, including temporary filing procedures for domestic and foreign patent requests. Subsequently, on October 11, 1961, Indonesia enacted Law No. 21 of 1961 on Company Marks and Trademarks (1961 Trademark Law), replacing the Dutch colonial Trademark Law. This marked the first Indonesian law in the field of intellectual property rights (IPR). The law came into force on November 11, 1961, with the aim of protecting the public from counterfeit and pirated goods. Interestingly, this date is now designated as National IP Day (Manurung and Heliyani 2021).

On May 10, 1979 Indonesia ratified the Paris Convention [Paris Convention for the Protection of Industrial Property (Stockholm Revision 1967)] based on Presidential Decree No. 24 of 1979. Indonesia's participation in the Paris Convention at that time was not full because Indonesia made exceptions (reservations) to a number of provisions, namely Articles 1 to 12, and Article 28 paragraph (1) (Sadnyini et al. 2021). In 1986, The Keppres 34 team played a pivotal role in

addressing the need for a patent system, leading to the passage of the Patent Law in 1989 (Purwaningsih 2020).

On September 19, 1987 the Government of Indonesia passed Law No. 7 of 1987 as an amendment to Law No. 12 of 1982 on Copyright. In the explanation of Act No. 7 of 1987 it is clearly stated that the amendment to Act No. 12 of 1982 is done because of the increasing copyright infringement that can endanger social life and destroy the creativity of society (Krisyanto and Cahyarini 2022). Following the enactment of Law No. 7 of 1987 the Government of Indonesia signed a number of bilateral agreements in the field of copyright as an implementation of the Act (Kasmoen and Saleh 2022). In 1988, based on Presidential Decree No. 32, the Directorate General of Copyright, Patents and Trademarks (DG HCPM) was established to take over the functions and duties of the Directorate of Patents and Copyrights, which was one of the echelon II units within the Directorate General of Law and Legislation, Ministry of Justice (Jamadi, Suparman, and Mashdurohatun 2022).

On August 28, 1992, the Government of Indonesia passed Law No. 19 of 1992 on Trademarks (1992 Trademark Law), which came into force on April 1, 1993. The 1992 Trademark Law replaced the 1961 Trademark Law. On April 15, 1994 the Government of Indonesia signed the Final Act Embodying the Result of the Uruguay Round of Multilateral Trade Negotiations, which includes the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS Agreement) (Novianti, Sriwidodo, and Sartono 2022). Three years later, in 1997, the Indonesian government revised the legislation in the field of IP, namely the Copyright Law 1987 jo. Law No. 6 of 1982, Patent Law 1989, and Trademark Law 1992 (Ramli et al. 2023). At the end of 2000, three new laws in the field of IP were passed, namely Law No. 30 of 2000 on Trade Secrets, Law No. 31 of 2000 on Industrial Designs and Law No. 32 of 2000 on Integrated Circuit Layout Designs (Subroto 2020) (Sulistianingsih and Ilyasa 2022).

Types of IPR

IPR includes different types of rights, including patents, copyrights, trademarks, and

trade secrets. For each type of right, explain what it is, what it protects, and examples from real life (Maurya et al. 2022).

Patents. A patent is an exclusive right granted by the government to the owner of an innovative idea or product as a right to claim and gain economic benefits from its manufacture. Patents in Indonesia are regulated under Law No. 13 of 2016 on Patents. Patents protect technological inventions and innovations. For example, if someone invents an innovative new tool, they can apply for a patent to protect their idea from others who may want to copy it (Daudsyah and Lubis 2023).

Copyright. Copyright is a form of legal protection given to a person or business entity to provide exclusive rights to a product or service created. Copyright in Indonesia is regulated in Law No. 28 of 2014 concerning Copyright. Copyright protects creative works such as writing, music, and other works of art. For example, if someone writes a book, they own the copyright to the text, which means others cannot copy or distribute the text without their permission (Nugroho and Utama 2020).

Trademark. A trademark is a mark that can be displayed graphically in the form of an image, logo, name, word, letter, number, arrangement of colors, in two-dimensional and/or three-dimensional form, sound, hologram, or a combination of two or more of these elements to distinguish goods and/or services produced by a person or legal entity in the course of trading goods and/or services. Trademarks protect the identity of a product used by manufacturers to identify their products as distinct from other products. For example, trademarks such as "Coca-Cola" or "Apple" help consumers identify products from a particular company (Wijanarko and Slamet Pribadi 2023).

Trade Secrets. A trade secret is information that is not known to the public in the field of technology and/or business, has economic value because it is useful in business activities, and is kept confidential by the owner of the Trade Secret. Trade secrets protect formulas, practices, processes, designs, instruments, patterns, or compilations of information that have inherent economic value because they are not generally known or

readily ascertainable by others. For example, the secret recipe for Coca-Cola is an example of a trade secret (Wijanarko and Slamet Pribadi 2023).

Thus, IPR is not only important for protecting the rights of creators and owners, but also for promoting innovation, economic growth, and consumer protection. These are important aspects of knowledge-based economic development in the current era of globalization (Lazariuc and Lozovanu 2021).

In the digital age, intellectual property rights (IPR) face several challenges: (1) **Rapid Dissemination of Content:** The internet enables swift and widespread distribution of digital material, complicating copyright control and protection. (2) **Anonymity and Jurisdiction:** Infringers can easily hide behind internet anonymity and operate from different legal jurisdictions, making enforcement more challenging. (3) **Plagiarism and AI-Generated Content:** Technologies like artificial intelligence (AI) can create content similar to existing works, posing challenges in determining ownership and originality. These challenges have two significant impacts: (1) **Legal Uncertainty:** Rapid technological developments often outpace legal adaptations, leading to uncertainty in IPR protection and enforcement. (2) **Digital Rights and Licensing:** New business models, such as digital licensing and streaming distribution, require adaptive legal frameworks to safeguard creators' and owners' rights in the digital landscape.

Result and Discussion

Concept of IPR in Islam

The concept of Intellectual Property Rights (IPR) in Islam has its foundations derived from the principles of Islamic law, primarily from the Quran, Hadith, and principles of fiqh (Islamic jurisprudence). Although there are no explicit texts with property rights, justice, and protection of creative and intellectual endeavors in the Quran that discuss intellectual property rights, the principles can be found (Meirison and Nazar 2021).

Here are some concepts and principles in Islam that are relevant to Intellectual Property Rights: (1) Justice in Trade: Islam emphasizes the importance of justice in all aspects of life,

including in trade and business. This principle can be applied in the context of IPR to ensure that creators and rights owners obtain fair rights and rewards for their creative endeavors. (2) Ownership and Property Rights: Islam recognizes the individual right to ownership and property rights. This includes the rights to intellectual works produced by individuals or groups. In the context of IPR, this means that individuals or companies have exclusive rights to the works they create. (3) Respect for Creative Enterprises: Islam encourages respect for creative and intellectual endeavors. This is reflected in the Prophet Muhammad's hadith which states that "A laborer is worthy of his wages" (HR. Thabrani).

This can be applied in the context of IPR by rewarding creators and owners of rights to their works. (4) Protection of Works and Rights: Islam emphasizes the need to protect the rights of individuals and groups. In the context of IPR, this means providing legal protection to copyrights, patents, trademarks and other intellectual property rights to prevent unauthorized use or theft of such works. (5) Benefits to Society: The principle of *maqasid al-syariah* (the objectives of sharia) emphasizes the importance of welfare and benefit to society as a whole. In the context of IPR, this means that the IPR system should be designed to ensure that the economic and social benefits of innovation and creativity are enjoyed by society at large. Thus, although there is no direct concept of IPR in the Quran, the Islamic principles of justice, ownership, respect for creative endeavors, protection of rights, and benefits to society can form the basis for the development of an IPR system that is compatible with Islamic values (Zulfikri 2022).

Challenges and Solutions in Implementing Islamic IPR Contracts

In this era of globalization and rapid technological advancement, the protection of Intellectual Property Rights (IPR) has become increasingly important. However, the application of IPR contracts in the Islamic context brings its own unique challenges and solutions, these challenges are: (1) Differences between conventional and Islamic law: There is an opinion that IPR protection is incompatible

with sharia in Islamic law. Some Islamic scholars believe that all forms of intellectual property rights are prohibited in Islam because they restrict the free flow of knowledge and ideas (Arifin n.d.). They argue that knowledge should be shared freely and prohibiting its distribution is against the spirit of Islam (Anon 2023). (2) Piracy and IPR infringement: In Indonesia, US rights holders continue to face challenges related to adequate and effective IPR protection and enforcement, as well as fair and equal market access. These issues include widespread piracy and counterfeiting, particularly the lack of enforcement against dangerous counterfeit products (Anon 2024). (3) The digital age and online piracy: The development of information and communication technology also brings new challenges related to IPRs (Novitasari 2024). Online piracy is a concern, particularly through piracy devices and apps, and illegal video recording and use of unlicensed software remain issues (Anon 2024).

To overcome the challenges above, the author formulates several solutions, namely: (1) Islamic economic business ethics: Islamic economic business ethics is present to be a solution for self-development in the business world and actions that are in accordance with norms and religion. This ethic can help in facing future economic challenges by keeping abreast of the times and innovating and cultivating self-ability to be able to adapt to increasingly advanced and developing circumstances (Ayu and Anwar 2022). (2) Application of Islamic law: the implementation of Islamic law in Indonesia can be a solution to the challenges of implementing Islamic IPR contracts (Maulida 2023). Islamic law has regulated clearly and in detail the laws relating to *ijaratul ajir* (labor contracts). (3) Enhanced IPR Protection: Indonesia needs to develop and fully fund robust and coordinated IPR enforcement efforts that include holding-level penalties for IPR violations in both physical and online markets. In addition, Indonesia also needs to undertake greater enforcement efforts against online piracy (Anon 2024).

Conclusion

In summary, the examination of Islamic perspectives on Intellectual Property Rights

(IPR) contracts reveals intricate interactions among legal structures, economic factors, and ethical principles. The historical evolution of IPR legislation in Indonesia—from the 1989 Patent Law to the establishment of the Directorate General of Copyright, Patents, and Trademarks—demonstrates the nation's commitment to promoting innovation, attracting foreign investment, and safeguarding creators' and innovators' rights. The concept of waqf (endowment) of IPR within Islamic law underscores the potential for using intellectual property to benefit society economically and socially, emphasizing ethical considerations. Furthermore, the application of Islamic treaty law in IPR contracts underscores the importance of fairness, transparency, and mutual benefit in business transactions. Ongoing threats to effective intellectual property rights (IPR) protection in Indonesia include piracy, counterfeiting, and online infringement. To address these challenges, robust enforcement efforts and the application of Islamic economic business ethics are necessary. By understanding the social and economic impacts of IPR contracts within an Islamic framework, policymakers and stakeholders can develop strategies that promote innovation, creativity, and economic growth while upholding ethical standards and legal principles. Indonesia should continue enhancing IPR protection, investing in enforcement mechanisms, and exploring the potential of Islamic law to address digital age challenges. By fostering an environment conducive to innovation, respecting intellectual property rights, and promoting ethical business practices, Indonesia can fully leverage IPR for economic development and social welfare.

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