

**INTELLECTUAL PROPERTY RIGHTS: A STUDY OF COPYRIGHT REGULATION IN
INDONESIA IN THE PERSPECTIVE OF POSITIVE LAW AND THE VALUE OF
BENEFIT**

Rio Pradita Wibowo

Legal Studies, Faculty of Law, Universitas Muhammadiyah Surakarta
c100210368@student.ums.ac.id

Jasmine Fahira Maulana

Legal Studies, Faculty of Law, Universitas Muhammadiyah Surakarta
c100210133@student.ums.ac.id

Yenny Ratnasari

Legal Studies, Faculty of Law, Universitas Muhammadiyah Surakarta
c100210058@student.ums.ac.id

Mutiara Dewi Lazha

Legal Studies, Faculty of Law, Universitas Muhammadiyah Surakarta
c100210327@student.ums.ac.id

Rakhul Akbar Maulana

Legal Studies, Faculty of Law, Universitas Muhammadiyah Surakarta
c100210359@student.ums.ac.id

Diana Setiawati

Legal Studies, Faculty of Law, Universitas Muhammadiyah Surakarta
ds170@ums.ac.id

ABSTRACT

Intellectual Property Rights (IPR) are exclusive rights granted to individuals or groups for their creative works that benefit society. They protect interests, financial rights, and prevent infringement.

This research aims to find out how the regulations in Indonesia and its benefits in the registration of Intellectual Property Rights, especially Patent Rights. This research uses normative juridical research to analyze legal issues using various legal materials. It focuses on positivistic views, principles, doctrine, discovery, systematics, harmonization, comparative studies, and history. The approach includes statutory and conceptual analysis, grammatical and systematic interpretation. Copyright protection in science, art and literature often coincides with creation, where the creator does not register the work. Indonesian copyright law uses principles such as *lex posterior derogat legi priori*. Islamic jurisprudence emphasizes intellectual property rights and the prohibition of unlawful consumption, the researcher draws from a concept namely *Maqashid As-Sharia*. The *Maqashid as-Sharia* approach, which focuses on the benefit of protecting the mind and property, can be used to study intellectual property rights in Islamic law. In this case, it is expected that the creators can register their creations for the sake of the formation of benefits.

Keywords: Economy, Intellectual Property Rights; Copyright; Islam; Sharia.

INTRODUCTION

Intellectual property rights, or IPR, are exclusive rights granted to an individual or group of individuals under laws or regulations for their creative work. This can be the creation of procedures, goods, or services that benefit society. Owners of creative works are granted a right called intellectual property rights (IPR) to protect their financial interests and rights.(1) Industrial property rights include things like patents, industrial designs, trade secrets, and integrated circuit layout designs. Copyrights cover things like music, movies, books, and other forms of artistic expression. IPR serves a number of important purposes, including providing legal protection for creators and their creative works, preventing infringement, increasing market share and competitiveness, and providing monopoly rights that prohibit the use of IPR by other parties without permission. IPR in Indonesia used to be called Intellectual Property Rights (HAKI) or just HAKI. (2)

Works that are the result of human intelligence are considered objects controlled under intellectual property law. As a major economic engine, intellectual property is increasingly important in both the national and global economy. Therefore, in order to maintain, encourage, and use intellectual property for national economic growth, a balanced approach to the global intellectual property system is required. The quality output of a product is demanded by the increasingly rapid flow of free trade, which has led to the development of several technologies to meet these needs. In line with this, the importance of IPR in driving technological progress is increasingly being widely recognized. In the

trading business sector, competition is essential to achieve the goal of acquiring customers and optimizing revenue.(3)

Indonesia is one of the countries that has a strong commitment in protecting intellectual property, which has long upheld this commitment through active participation at the national, regional, and world levels. In Indonesia, laws such as the Trademark Law, Copyright Law, and Patent Law define intellectual property rights. Intellectual property rights are essentially exclusive rights granted to designers, inventors, and artists with respect to their intellectual products or works. The purpose of the state is outlined in the fourth paragraph of the Preamble of the 1945 Constitution (UUD 1945) as follows: The articles of the 1945 Constitution that define the welfare of a nation in terms of its ability to develop economically, further outline the purpose of the new state government: “Furthermore, to form an Indonesian State Government that protects the entire Indonesian nation and all of Indonesia's spilled blood and promotes general welfare, educates the nation's life, and participates in carrying out world order based on independence, lasting peace, and social justice.(4)

Law (UU) of the Republic of Indonesia Number 28 of 2014 concerning Copyright and Government Regulation (PP) Number 56 of 2021 concerning Royalty Management for Copyright of Songs and/or Music regulates the protection of intellectual property rights (IPR) in Indonesia. The enactment of Law Number 28 of 2014 on Copyright has increased the confidence of commercial and artistic stakeholders in Indonesia in the safeguarding and implementation of intellectual property rights (IPR) legislation in the country.(5) Their desire to create new works stems from copyright protection, which guarantees that their efforts will be rewarded and compensated accordingly. Indonesia can develop into a vibrant center of arts and culture, and local and international communities can appreciate the creative works produced there by fostering innovation and originality. Therefore, the history of copyright development in Indonesia includes not only legal compliance but also increased economic growth, cultural preservation, and creative inspiration. Based on the matters described above, there are several issues that will be discussed in this article, among others:

1. How does the Regulation on Copyright protect people's works?
2. How does the interest of gaining favor in the registration of Intellectual Property Rights?

RESEARCH METHOD

In this research, the type of legal research used is normative juridical research in which analysis of certain legal issues is carried out on various legal materials. Normative legal research includes legal

science innovation based on certain characteristics.(6) Normative legal research will focus on positivistic views, legal principles and legal doctrines, legal discovery in certain cases, legal systematics, legal harmonization, comparative studies, and legal history.(7) This normative legal research will be conducted using 2 (two) types of approaches, namely as follows:

1. In using this approach (*statute approach*), the researcher must understand the principles, principles, and order of laws and regulations.
2. Conceptual approach, conceptual approach is an approach by examining certain concepts that will be associated with legal issues that are the focus of research. This approach can refer to expert paradigms and other legal materials to interpret certain norms.

In normative legal research, legal materials that have been obtained are completed, then legal materials will be analyzed. In this research, the author will use descriptive analysis and then be supported by interpretation of existing laws and regulations. The interpretations that will be used are grammatical interpretation and systematic interpretation.(8)

RESULT AND DISCUSSION

Copyright Protection in Indonesia

With the enactment of laws by the Dutch Colonial Government, intellectual property rights (IPR) have been protected in Indonesia since the 1840s. The purpose of Indonesia's Copyright Law, also known as Law Number 28 of 2014 on Copyright (Copyright Law of 2014), is to promote and secure the production, sharing of cultural works relating to science. In Indonesia, intellectual property rights include things like copyrights, trademarks, patents, industrial designs, and protection of plant varieties resulting from human intellectual talent. Protecting consumers, which is the same as protecting society as a whole, is included in the protection of intellectual property rights in Indonesia. (9)

Law No. 28 of 2014 on Copyright (Copyright Law of 2014), copyright is defined as the exclusive right of the creator that arises automatically based on the declarative principle after a work is realized in real form without reducing the limitations in accordance with the provisions of laws and regulations. The definition is stated through Article 1 number 1. In this context, copyright makes clear the principle of declaratory legal protection that applies immediately upon creation of a work and does not require registration. The law becomes the legal basis for copyright rules and copyright license agreements. Article 80 to Article 83 of the Copyright Law of 2014, Chapter XI on Licenses

and Compulsory Licenses, further regulates the substance of the issuance of licenses and Copyright agreements. In this case, the law prohibits license agreements and clauses in license agreements that can harm the Indonesian economy or conflict with the law. Furthermore, a license agreement cannot be used to eliminate or transfer all of the creator's rights to his/her work. (10)

In the fields of science, art and literature, copyright often arises at the same time as a work or creation is produced, such that the announcement of the work coincides with the legal protection of the copyright on the work. It is not necessary for the creator to register the work; however, copyright can also be registered. According to a study, the way artificial intelligence (AI) generates music, essays, and paintings by using inventions as input data may make copyright infringement more likely because its use is only prohibited from being copied or used for profit (commercial), so it can be concluded that artificial intelligence (AI) is an art that comes from creation and needs to be registered.(11)

Theoretically, copyright ownership as a property right can be divided into two categories: rights relating to the creator (authorship) and rights relating to the creation (ownership). The difference between these two rights stems from the appreciation of copyright as a property right or ownership of intangible objects. The moral rights fundamental to authorship include the creator's right to be recognized and rewarded for his or her work. The owner of a work, often referred to as the copyright holder, is only entitled to economic rights. Usually, only one person has these two rights, the creator. This means that the copyright owner is also the creator. On the other hand, they are also commonly associated with two different parties.(12)

There are many guiding concepts in copyright law in Indonesia. The principle of *lex posterior derogat legi priori*, which states that a law passed later (*lex posterior*) can supersede a law made earlier (*lex priori*) in case of disagreement, is one of the key concepts. Conflicting or conflicting laws and regulations are resolved using this idea. In addition, the doctrine of *lex specialis derogat legi generali* also applies, meaning that if there is a difference of opinion between special and general laws and regulations, special and general laws and regulations can take precedence.(13) Where there are differences or conflicts between laws and regulations with different levels of stringency, this approach is used to resolve them. Another principle is *lex superior derogat legi inferiori*, which states that in case of disagreement between two regulations, the higher regulation (*lex superior*) can replace the lower regulation (*lex inferiori*). When laws and regulations differ in their level of force, inconsistencies or disputes between them can be resolved using this approach.

These guidelines are used in the Copyright Act to resolve disputes between laws and regulations relating to copyright, including copyright in literary, artistic, and scientific works. These guidelines help in determining which laws are applicable in certain circumstances and which are not. In reality, the guidelines are applied in the resolution of copyright-related legal disputes by the Ministry of Law and Human Rights (MOLHR) and the Directorate General of Intellectual Property (DJIP). They safeguard copyright and regulate the use of creative, literary, and scientific works by using these principles to decide which restrictions apply and which do not apply in certain circumstances.(14)

Interests to benefit the protection of intellectual property rights

Economics is one of the issues that are closely related to various aspects of human life. In fact, economics is the study of how people perform various activities related to the fulfillment of their basic needs. Therefore, since the issue of wealth is one component of the objectives of economic activity, economic interests and wealth cannot be separated. Islam, a complete religion, offers an ideal legal system that can handle every aspect of human life, including financial matters.(15)

Economic problems are one of the problems that cannot be separated from various aspects of human life. In fact, the study of economics explains how people perform various activities to fulfill their basic needs for survival. Since wealth is one of the target components of economic activities, it is impossible to separate economic problems from the difficulties associated with wealth. Islam is a complete religion that can accommodate all aspects of human life, including financial matters, and offers an ideal legal framework. As mentioned earlier, money is one of the main issues covered by Islamic law. As for wealth itself, it belongs to one of the groups of fundamental advantages that are *dharuriyat* in nature and require legal safeguards in order to maintain the values of *Maqashid as-Sharia*.(16)

In economic matters, property rights are essentially the most fundamental issue. Islam even emphasizes the acquisition of money and its proper use, which comes naturally after ownership. In addition to the status of wealth as an important component of the economy, the advancement of science, which is also driven by the results of human thought, has produced a number of benefits that support human sustainability. Humans have the intellectual capacity to create valuable and profitable works of art, which eventually gave birth to the notion that intellectual property should be recognized as an asset that deserves legal protection.(17)

Intellectual property rights are a topic that has not been discussed in detail by classical fiqh scholars. However, since the *Maqashid as-Sharia* approach plays a key role in determining the methodology of Islamic law formation, including in the field of economics, it is possible to investigate the legal formulation for the protection of intellectual property rights through the use of Islamic law. this approach. It makes sense that the study of economics examines the principle of benefit in economic issues, one of which is commercially valuable intellectual property rights, using the *Maqashid as-Sharia* approach.(18) The framework of the *Maqashid as-Sharia* approach, which includes the goal of benefit, which is the purpose of Islamic law itself, can be used to examine the legal formulation of intellectual property rights protection in Islamic law. Islam considers the maintenance of reason (*hifdz al- 'Aql*) and the maintenance of assets (*hifdz al-Mal*) in relation to intellectual property rights.(19) The concept of the benefits of intellectual property rights is the foundation of Islamic jurisprudence. Intellectual property rights have utility value and can be utilized as an object of economic activity through their beneficial characteristics. In addition to these advantages, the rationale behind the prohibition of unauthorized consumption of other people's property is also a model of how Islamic law on intellectual property can develop. Therefore, to acquire property, one must adhere to the principle of halal; intellectual property rights, which are legally considered as property and ownership rights, cannot be utilized arbitrarily by people who are not the owners.(20)

CONCLUSION

The Copyright Law in Indonesia 2014 defines copyright as the exclusive right of the creator, which arises automatically after a work is realized in a tangible form without reducing the limitations in accordance with statutory regulations. This includes prohibitions on license agreements and clauses that may harm the Indonesian economy or conflict with this law. Copyright ownership can be divided into rights relating to the creator (authorship) and rights relating to the creation (ownership), the latter of which is considered a property right or ownership of intangible objects. Disputes over legislation are resolved by the principle of *lex priori* and the doctrine of *lex specialis derogat legi generali*. Islamic law emphasizes the acquisition and proper use of money, with the *Maqashid as-Sharia* approach examining intellectual property rights in Islamic law.

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