The urgency of intellectual property rights in the digital era from the perspective of Sharia economic law in Indonesia

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ABSTRACT

Intellectual Property Rights, or IPR, are essential for economic development and innovation, especially in the current digital era. However, certain aspects need to be considered in the context of Islamic financial law to ensure that IPR is applied relatively and by legal principles, especially law of Islam. This article analyzes the perspective of Islamic economic law regarding IPR in the current digital era, including its protection, use, and utilization. This study is a normative juridical study using a statute approach, which begins by investigating existing laws and regulations both in the positive legal framework and in the Islamic legal framework, which is based on the Koran, Hadith, and fatwas of the Ulama. Based on the study, it was found that even though IPR is not stated explicitly in the sharia, it refers to its essence, which is equated with property (mal), based on the norms, values, and principles contained in Islamic law, especially the mashed asy sharia theory, protection of IPR is very basic and integrated into the belief held by Muslims that Islam, which consists of monotheism, sharia, and morals, is an inseparable unity and illegal use of IPR is an injustice. The urgency of this study lies in the importance of IPR protection to encourage innovation and creativity in various fields, as well as the importance of considering Sharia principles in the use of IPR to provide optimal economic benefits for rights owners and society.

Article history:
Received 24 September 2023
Received in rev. form 19 Nov. 2023
Accepted 21 November 2023

Keywords:
Intellectual property rights, digital era, sharia economic law

JEL Classification:
O15, E41, L4

Introduction

Intellectual Property Rights, or IPR, is an issue of ownership rights with global implications. As one example, IPR intersects with the current development of the creative industry at the national and international levels. This innovative idea is a resource that has economic value. Therefore, it must be protected, an essential aspect of IPR. The government appeals to the public, especially creative economy actors, to be aware of the importance of IPR.

Meanwhile, from the perspective of Sharia economic law, IPR should be seen using the values contained in Islam, namely by approaching Sharia principles (especially Sharia economics, which is part of Islam as a whole), which in general is intended for the benefit of the community without ignoring rights. Ownership because, in Islam, the right of property ownership in whatever form is included must be protected. These matters will be studied further to obtain understanding and information regarding the existence and protection of IPR, especially in the current digital era, both according to existing positive law and the view of Sharia economic law, which, of course, comes from Islamic law which is the raw material for National Law.

Digital law and technology, commonly called information technology law, is a functional law and legal discipline that has received widespread attention in recent decades (Custers, 2022). Developing new technologies such as big data, artificial intelligence, blockchain technology, and advanced algorithms raises questions regarding regulating these technologies, such as what rights and protections citizens have or should have (Barocas 2016; La Fors 2019).

Several studies on IPR have been carried out both from a positive legal perspective and an economic perspective. Therefore, this study will discuss specifically from the perspective of Sharia economic law and relate it to the development of digitalization, which
is currently very developed because digitalization allows the use of technology for various activities, which provides misuse in the use of IPR.

This article analyzes the perspective of Islamic economic law regarding IPR in the current digital era, including its protection, use, and utilization. This study is a normative juridical study using a statute approach, which begins by investigating existing laws and regulations both in the positive legal framework and in the Islamic legal framework, which is based on the Koran, Hadith, and fatwas of the Ulama.

**Literature Review**

This study is a normative juridical study based on the statute approach, namely a statutory approach to find legal rules originating from legal materials that live and grow in Indonesia as The Living Law, especially Islamic law, which has been transformed into the national legal system so that become positive law in the field of IPR. The search will be completed by editing the legal materials found. Supplemented with other secondary data, analysis and interpretation will be carried out to conclude finally.

Intellectual property rights, known as IPR, contain many aspects, and one of them is copyright. Copyright is a unique, special, or exclusive right given to the creator or copyright holder. This particular right means that no other person may use this right except with the permission of the creator or copyright holder concerned (Rachmadi, 2003: 86). This understanding of copyright leads to a belief in the need to understand IPR and its aspects. IPR regulates various works that arise or are created through human intelligence, such as copyrights, patents, trademarks, industrial designs, and trade secrets. IPR is not just a legal, technical issue but also concerns economic interests, and violations of IPR can not only cause losses to the state and its inventor. Still, they can also have the impact of disrupting economic relations between countries and can even lead to political tensions between countries. Intellectual property is unique among factors of production in that it is intangible (thus non-competitive) and exists only where the law defines it. This law, however, is territorial, not global. A country does not have to provide patent protection to foreign inventors (Gmeiner 2021, Jensen 2017). If clarified, IPR is the right to property that arises or is born due to human intellectual abilities. The work in question consists of science, art, literature, or technology, which are taken from sacrifices in the form of energy, time, and even costs so that the work certainly has value or provides benefits. Economics (IPR Introduction Guide, Indonesian Ministry of Industry)

Meanwhile, IPR, or intellectual property in the view of Sharia economics, is an individual right that must be protected, and its use must be by sharia provisions because rights are a gift from the owner of the rights, namely Allah (M. Musyafa, 2013). Thus, the main objective of IPR is to provide optimal economic benefits to rights owners and society as a whole while ensuring distributive justice, compliance with the law, public benefit, and transparency in its use. In practice, the implementation of IPR in Sharia economics must reflect Sharia economic principles and follow a fair and ethical framework, to provide optimal economic benefits for rights owners and society at large.

In the guide to introducing IPR issued by the Ministry of Trade, it is stated that IPR is beneficial not only for the business world because it protects against misuse or counterfeiting of intellectual works owned by other parties domestically or abroad, but IPR is also helpful for investors, the Government and The main thing is that it is undoubtedly beneficial for the rights holder because they receive legal protection so that they can take legal action if necessary and can grant permission to use the IPR if they own. In this regard, it is essential to pay close attention to several types of IPR that are protected by law in Indonesia (Introduction Guide to IPR) with the latest legislative regulatory approach to regulate them, namely:

i. Hak Cipta (UU No. 28 of 2014). Hak Cipta is the creator's exclusive right, which arises automatically based on declarative principles after a work is realized in natural form without reducing restrictions following statutory provisions.

ii. Patents (UU No. 13 of 2016 amended by Law No. 11 of 2020). A patent is an exclusive right granted by the state to an inventor for the results of his invention in the field of technology for a certain period to implement the design himself or give approval to another party to implement it. Patents protect technical, new, and applicable improvements in the industry.

iii. Brand (according to UU No. 20 of 2016). A brand is a sign that can be displayed graphically in the form of an image, logo, name, word, letter, number, or color arrangement in 2 (two) dimensions and 3 (three) dimensions, sound, hologram, or a combination of 2 (two) more of these elements to differentiate goods and services produced by individuals or legal entities in goods and services trading activities.

iv. Industrial Design (according to UU No. 31 of 2000). Industrial Design is the creation of shape, configuration, or composition of lines or colors or lines and colors or a combination thereof in three-dimensional or two-dimensional form, which gives an aesthetic impression and can be realized in three-dimensional or two-dimensional patterns and can be used to produce a product, goods, industrial commodities or handicrafts.

v. Trade Secrets (according to UU No. 30 of 2000). Trade secrets are information not known to the public in the field of technology and business, has economic value because it is helpful in business activities, and is kept confidential by the owner of the trade secret.

vi. Integrated Circuit Layout Design abbreviated as DTLST (according to UU No. 32 of 2000). Circuit layout design is divided into integrated circuits, namely a product in finished or semi-finished form that contains various elements, and at least one of these elements is an active element that is partially or wholly interconnected and formed in an integrated manner in the intended semiconductor material. To produce electronic functions. Meanwhile, layout design is a creation in the form of a
three-dimensional layout design of various elements, at least one of which is an active element, as well as all or all of the interconnections in an integrated circuit, and the three-dimensional layout is intended to prepare for the creation of an integrated circuit.

In connection with Sharia economic law, it is necessary to explain that several fundamental principles of Sharia economics must be taken into account in the context of protecting IPR, such as the principle of no absolute ownership of something; all existing resources are a gift from Allah, moving the economy in a congregation and guaranteeing the right of Society and its planning for the benefit of many people. (This issue must be deepened with references and linked to maqashid ash sharia). Verses from the Koran and Hadith that can be conveyed to support these principles include QS. Al-Hujurat: 13 expresses the importance of knowing each other and that a person's superiority before Allah is determined by his holiness. The hadith of obeying the law states that Allah likes people who fulfill their promises and can be trusted in their business affairs (HR. Abu Daud). Likewise, the principle of public benefit emphasizes the importance of paying attention to the public interest in every action. This principle demands that the use of intellectual work be carried out in a halal manner and provide benefits to Society. Verses related to the direction of public benefit can be found in the QS. Al-Baqarah: 195 emphasizes that we should not fall into loss and always do good because Allah loves those who do good.

In providing IPR protection, several obstacles must be considered, namely gaps in understanding and awareness of the importance of IPR. This happens because many still need to understand the importance of IPR protection to encourage innovation and creativity in various fields. Apart from that, because IPR is an aspect of security that is adhered to by all countries in the world, while not all countries have a strong and effective IPR protection system, it is necessary to collaborate between countries, especially Muslim countries, in protecting and utilizing IPR. These obstacles need to be anticipated, especially now when digitalization is so massive and has an impact on all dimensions of life, including the economic sector, whose reach touches various sizes of life, such as the banking world, the business world, and others (Setyaningish Sri Utami, 2010). Specifically, the influence of digitalization is enormous for the economy, namely the ease of marketing products, the existence of new services in carrying out buying and selling transactions, and an increase in productivity. Still, these benefits are also accompanied by negative impacts, such as the opportunity for illegal transactions to occur (Bakti, 2018) and even the possibility of violating the established IPR protection. This is possible because, according to Gartner, digitalization is generally switching from analog to digital in the business realm to obtain new sources of income and business opportunities. Also, Dr. J Scott Brenner and Daniel Kreiss say that digitalization tends to restructure digital communication and media infrastructure in various elements of human life, which can change human interactions (DTI, 2023).

Changes in human interaction in the current millennial era are felt because almost all activities and activities are supported and interact with digital systems. For example, online markets (e-commerce), online tickets, digital books, and so on, including the field of Copyright (as one part of IPR) is the activity of enjoying music, songs, and films. These things make it easy for creators to introduce and disseminate their creations. Still, other aspects harm their creative works, and this was conveyed by Razilu (Acting Director General of KI), who stated that modern and sophisticated technology makes it easier for people to do so—piracy of copyrighted music and songs. Prof. Ramli said that currently, consumers can directly access thousands or even hundreds of thousands of songs even though they do not own the Copyright (Fitri Novia Hariani, 2022), while on the other hand, the reproduction of copyrighted works is for educational purposes, research, as long as it is non-commercial and for evidentiary purposes in court. It is considered not a copyright violation (Dannivanto, 2007). Substantially, this seems like there is a difference in treatment, but whatever it is, this shows the need for further scrutiny regarding the existence of the Copyright Law (UUHC) as one part of IPR because the digital era has made it possible for all of these things to happen, even WIPO (World Intellectual Property Organization) in its conference in Geneva which was attended by 160 countries in December 1996, captured the importance of environmental changes to protect copyrighted works, namely by the issuance of two international conventions, namely the WIPO Internet Treaties, namely the WIPO Copyright Treaty (WCT) and the WIPO Performance and Phonogram Treaty ( WPPT) which are two products to respond to developments in the digital environment (Khwarizmi Maulana Simatupang, 2021).

Another thing related to the importance of IPR in this era of digitalization is protection for business actors because trademarks can easily be misused or stolen through cybersquatting techniques, namely by third parties registering trademark domain names to make money or damage the brand's reputation, including the emergence of e-platforms. -Commerce has led to high levels of product counterfeiting and the sale of counterfeit goods, which hurts customers and brand owners. However, the digital era also offers IPR protection patterns, namely systems that can monitor and track using a blockchain system that can develop payment patterns automatically (Silvana Juliant, 2023). For example, this example shows that it is essential to protect brands or copyrighted works or even other forms of IPR, and this has been anticipated by the issuance of several statutory regulations regarding this matter in line with what is stated in the Declaration of Human Rights Article 27 (2) that every person has the right to obtain protection for moral and material interests obtained as a result of a scientific, literary or artistic production created by him (Universal Declaration of Human Rights).

What is included in the Declaration of Human Rights indicates that protection of IPR is a recognition of the protection that needs to be given to humans who have rights as a fundamental and universal value that is owned by humans and are human and are vulnerable to being taken/controlled/abused by other humans. So, it needs to be protected. In line with this, it is necessary to study the view of Islamic law, especially in this case, sharia economic law, regarding IPR because apart from being a human right, IPR also has financial content, which must be protected. After all, it has the potential to be taken over or misused.
Islam is the religion of rahmatan lil alamin (Farah Ramadanti, 2023), meaning that Islam, whose presence among people's lives can create peace and compassion for humans and the universe, and is also defined as a value that does not justify discrimination due to differences in religion, ethnicity, race, and nation. Islam does not prohibit someone from being creative or channeling ideas to fulfill needs to obtain the highest benefit and utilization (Idri, 2021). These values imply that Islam has universal, global, and comprehensive values for everyone. These values are reflected in the Al-Quran surah Ar Rum verse 22, which means: "and among the signs of His power is the creation of the heavens and earth and the diversity of your languages and the color of your skin. Indeed, in that there are true signs for those who know.” In line with this, from the perspective of sharia economic law, which is based on Islamic values, talking about IPR requires knowing first how Islam views the issue of rights. Hasbi Ash Shidiqiy stated that rights in Islam are divided into two, namely, in a specific and general sense. In a specific sense, rights are basic rules that must be obeyed in human relations, whether regarding people or property. In contrast, rights are generally defined as Sharia provisions to determine a power or legal burden (Hasbi as Shidiqiy, 1999). Meanwhile, property in Islam is defined as control over something or something owned and allows one to act legally on it by buying and selling, renting, waqf, or lending it to other people (Nasroen et al., 2007). This gives birth to a fundamental understanding that Islam does not recognize absolute mastery in ownership, especially in knowledge, or in other words, mastering and protecting knowledge so that other people do not know about it. However, on the contrary, Islam encourages people to spread knowledge and share it because, in essence, everything belongs to them. Allah as hinted at in the Koran, Surah Al Baqarah verse 189, the translation of which reads: "To Allah belongs the Kingdom of the heavens and the earth, and Allah is Almighty over all things.” Thus, everything in this universe has the owner of Allah, and humans were created in a weak and ignorant state and had no ability or strength. However, Allah gave reason and reason and thus the ability of humans to create and discover. Something is also based on the will and grace of Allah's love. Therefore, IPR, as a right to human abilities, cannot be protected and shared for the benefit of humanity. On the other hand, people cannot arbitrarily use IPR owned by others without the owner's permission because it is a right that God gave to someone. That is why protection is needed. IPR is referred to in Islam as Iftikhar, which is a right of economic value (the right to obtain economic benefits) and a moral right (a right inherent in the creator) that cannot be taken for granted (Ade Hidayat, 2014). Even though in the context of Islamic law, IPR is a new issue that is not discussed in particular terminology, it is still being debated and studied in its existence by ulama (Muflihi Wijayati, 2014).

The discussion above suggests that the discussion of IPR or intellectual property in Islamic law is more directed towards discussing the concept of property ownership so that its use is also linked to the wise use of other people's property. In the Koran, this is widely regulated. The main problems in the economy are injustice and distribution. Injustice causes the production process not to be optimal, thus hampering production increases, giving rise to a feeling of not belonging to one another (self-belonging), thereby reducing society's work ethic in general (Idri, 2021). One of the guidelines is what is contained in the Al-Quran Surah An Nisa verse 29, the translation of which reads: "O you who believe, do not falsely devour each other's wealth, except using commerce that is carried out mutually between you, and do not kill yourselves. "Indeed, Allah is most merciful to you,” Several verses of the Koran that regulate the issue of utilizing ownership rights are reinforced by several hadiths that suggest the same thing; for example, the Messenger of Allah said, "Indeed, your blood (soul) and property are harams (noble and protected).” This all illustrates how firmly Islam provides protection regarding a person's ownership rights to their property, and property is not only a matter of material assets but also applies to their usefulness. This is even clearer if it is referred to the theory of maqashid ash sharia, namely that Islamic sharia aims for human benefit by maintaining religion, soul, reason, honor, and property. Based on all this, the Indonesian Ulema Council (MUI) issued a fatwa prohibiting violations of other people's intellectual property rights (Muflihi Wijayati, 2014).

Fatwa of the Indonesian Ulema Council Number 1/MUNAS VII/MUI/5/2005 concerning the Protection of Intellectual Property Rights (HKI) which was issued at the VII MUI National Conference on 19-22 July 2005 with the consideration that IPR violations had reached an alarming level. There was a submission request from the Anti-Counterfeiting Society (MIAP) for the MUI to issue a fatwa regarding the status of Islamic law regarding IPR. The MUI fatwa is not only guided by the Al-Quran and hadith but also many ulama's opinions, thus determining that what is included in the IPR category are plant varieties, trade secret rights, industrial design rights, integrated layout design rights, patents, brand rights, copyright. In Islamic Law, IPR is seen as one of the Fuqua Majilah (property rights) which receives legal protection (mashun) as well as mal (wealth) and every form of violation of IPR includes and is not limited to using, disclosing, making, using, selling, importing, Exporting, circulating, handing over, providing, announcing, reproducing, plagiarizing, counterfeiting, pirating other people's IPR without right is an injustice and is haram. The MUI fatwa (MUI, 2005) clearly prohibits these actions. In fact, in one of the online law articles, it is stated that this MUI fatwa is more "harsh” than positive law because those who are judged are those who copy and distribute it and those who use it. Apart from that, what is also interesting is that IPR can be used as the object of a contract and can be donated. Or inherited (Zae, 2005).

The MUI fatwa does not have binding power as per statutory regulations. However, the MUI fatwa provides moral strength and a solid religious foundation for most Muslim business people and consumers. Especially in the current era, which is called the digital era, where plagiarism, counterfeiting, halal use, and exploitation of IPR have the potential to occur, enforcing statutory regulations is very important, and the strength of the moral and religious foundations will certainly strengthen existing statutory provisions. The current development of digitalization cannot be avoided and has even penetrated the religious sector, so there is the term religious digitalization. This is because many platforms can facilitate communication and interaction between Muslims (Bowo Pribadi, 2023) by disseminating religious knowledge and increasing the number of books/scriptures and other information. However, it needs to be realized that if this is not monitored correctly, it will disrupt the sacredness of values. Religion and of course, the disruption of protection for the creative works of previous scholars.
Conclusion

In the era of globalization and technological progress, intellectual property rights (IPR) significantly advance the economy. They can also be a potential to be monitored concerning illegal or illegal use of other people's IPR. For this reason, creating a mechanism to enforce existing provisions to provide maximum protection to IPR owners is necessary. In Islam, IPR is wealth like property (mall), which must be protected, and is haram (an injustice) if its benefits are taken without rights. Efforts to increase understanding and awareness of the importance of IPR must also be accompanied by developing an IPR protection system that is by Sharia principles and the need to increase cooperation between Muslim countries in protecting and utilizing IPR Global.

Acknowledgement

Author Contributions: Conceptualization, Methodology, Data Collection, Formal Analysis, Writing—Original Draft Preparation, Writing—Review And Editing by authors with equal participation. All authors have read and agreed to the published the final version of the manuscript.

Institutional Review Board Statement: Ethical review and approval were waived for this study, due to that the research does not deal with vulnerable groups or sensitive issues.

Data Availability Statement: The data presented in this study are available on request from the corresponding author. The data are not publicly available due to privacy.

Conflicts of Interest: The authors declare no conflict of interest.

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