

Revitalizing Intellectual Property Rights in Indonesia: A Maqasid al-Sharia Perspective on Communal Ownership

*Hari Sutra Disemadi¹, Sholahuddin Al-Fatih², Ninne Zahara Silviani³,
Shelvi Rusdiana⁴, Emiliya Febriyani⁵

Universitas Internasional Batam, Indonesia^{1,3,4,5}

Universitas Muhammadiyah Malang, Indonesia²

Corresponding author: *hari@uib.ac.id

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Abstract

Indonesia's diverse cultural heritage significantly contributes to its economic growth, yet the current intellectual property system, based on Western principles, may not fully align with the country's cultural values. This research aims to enhance the legal framework for Indonesia's communal intellectual property (CIP), by exploring the potentials brought by of Islamic law, particularly *Maqasid al-Shariah*. For this purpose, this research utilizes the normative legal research method, analyzing relevant norms within existing laws and Islamic legal doctrines, revealing conceptual correlations between *Maqasid al-Shariah* and CIP. This research also aims to addresses the common misconceptions regarding *Maqasid al-Shariah* is crucial for effectively utilizing Islamic law principles in Indonesia's legal system. The analysis demonstrates that communal intellectual property aligns with both Western IP principles and Islamic values, as it recognizes the importance of community welfare and individual benefits. Integrating *Maqasid al-Shariah* values into Indonesia's CIP legal framework can promote a more inclusive, equitable system that respects collective knowledge and cultural heritage while fostering innovation and creativity.

Keywords: Communal intellectual property; communal ownership; Islamic law; maqasid al-sharia

Introduction

Indonesia is a country with a rich and diverse cultural heritage that has contributed significantly to the world's knowledge and cultural wealth.¹ However, the current legal framework for intellectual property rights in Indonesia is primarily based on a Western legal tradition that may not fully reflect the country's cultural values and traditions,² as the western legal traditions for intellectual property law is commonly known for its individualistic nature.³ In contrast, Islamic values can offer a contrast to this individualistic system, by putting greater amount of focus on public interest and communal values. This research aims to dive into the exploration of relevant Islamic principles, to analyze the potentials and challenges of further developing the current legal framework for communal intellectual property (CIP) rights in Indonesia.

The concept of communal ownership can be traced back to Islamic jurisprudence, which emphasizes the community's collective responsibility for the welfare of its members, as one of the purposes of *Maqasid al-Shariah*.⁴ This concept is particularly relevant to intellectual property rights, where communal ownership can help to ensure that knowledge and cultural works are used for the public good. By exploring the Islamic legal tradition's views on communal ownership and intellectual property, this research aims to develop a more culturally sensitive and appropriate legal framework for intellectual property rights in Indonesia.

Indonesia has a rich Islamic heritage, with over 87% of the population identifying as Muslim.⁵ Islamic law, or Shariah, is recognized as a source of law in Indonesia's legal system, and there is growing interest in developing a more comprehensive and culturally sensitive approach to intellectual property rights that incorporates Islamic legal principles. This research aims to contribute to this effort by exploring the case for communal intellectual property rights in

¹ Yunita Maya Putri, Ria Wierma Putri, and H. S. Tisnanta, "Communal Rights As Hegemony In The Third World Regime: Indonesian Perspective," *Indonesian Journal of International Law* 19, no. 2 (2022): 289–315, <https://doi.org/10.17304/ijil.vol19.2.5>.

² Erlina B. et al., "Implementation of the Utilization of West Lampung Traditional Cultural Expression in the Legal System Perspective of Intellectual Property," *ENDLESS: International Journal of Future Studies* 5, no. 3 (2022): 145–55, <https://doi.org/10.54783/endllessjournal.v5i3.99>.

³ Eva Niswah, "The Forms of Intellectual Property Rights Waqf as a Part of Productive Waqf," *International Journal of Social Science and Religion (IJSSR)* 3, no. 1 (2022): 71–92, <https://doi.org/10.53639/ijssr.v3i1.64>.

⁴ Abdul Halim Ibrahim et al., "Maqasid Al-Shariah Based Islamic Bioethics: A Comprehensive Approach," *Journal of Bioethical Inquiry* 16, no. 3 (2019): 333–45, <https://doi.org/10.1007/s11673-019-09902-8>.

⁵ Sumadi Sumadi and Octavia Gandra Sari, "The Benefit Segmentation Sharia Tourism in Indonesia," *Jurnal Ekonomi & Keuangan Islam*, 2022, <https://doi.org/10.20885/jeki.vol8.iss1.art8>.

Indonesia from an Islamic perspective. Basing on the huge influence that the religion of Islam has on the lives of Indonesians, this research hopes to make knowledge about intellectual property more accessible by analyzing the Sharia's stance on it. This research focuses particularly on communal intellectual property (CIP), which to this day still lacks comprehensive legal framework.

The potential benefits of communal intellectual property rights for Indonesia are numerous.⁶ By recognizing the community's ownership of intellectual property, it can help to promote collaboration, accessibility, and sustainability, while ensuring that knowledge and cultural works are used for the public good. This approach can also help to address some of the challenges faced by Indonesia's creative industries, such as piracy and copyright infringement, by providing a more culturally appropriate and effective legal framework for protecting intellectual property rights.

Communal intellectual property rights have gained increasing attention and popularity in recent years, particularly in the context of developing countries where the current intellectual property system's limitations have become more apparent.⁷ Unlike the typical individual-oriented intellectual property rights, communal property rights as a concept puts a great emphasis on collective ownership of an intellectual property, particularly those that are developed communally through years of cultural developments. There is growing recognition that intellectual property is not simply a private commodity but rather a public good that should be owned and shared by the community as a whole.⁸ Ultimately, communal intellectual property is mainly about recognizing generations-worth of communal interactions that have shaped a certain part of a society.⁹ Acknowledging the importance of this can help to promote collaboration, accessibility, and sustainability, while ensuring that knowledge and cultural works are used for the public good not just in Indonesia but also other countries around the globe.

⁶ Purnama Hadi Kusuma and Kholis Roisah, "Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal," *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (January 2022): 107–20.

⁷ M. Citra Ramadhan and Fitri Yanni Dewi Siregar, "Constraints to the Protection of Communal Intellectual Property Through Inventory by the Directorate General of Intellectual Property," *Kanun Jurnal Ilmu Hukum* 24, no. 3 (2022): 267–77, <https://doi.org/10.24815/kanun.v24i3.28098>.

⁸ Nuraeni Nuraeni and Rona Ikram Putri, "The International Dimension of Communal and Traditional Intellectual Property Rights Protection in Indonesia," *Intermestic: Journal of International Studies* 2, no. 1 (November 2017): 74–85, <https://doi.org/10.24198/intermestic.v2n1.6>.

⁹ Hari Sutra Disemadi et al., "The Dichotomy of Traditional Cuisine Protection in Indonesia: Geographical Indications vs. Traditional Knowledge," *Jurnal Hukum Novelty* 14, no. 2 (December 2023): 224–39, <https://doi.org/10.26555/novelty.v14i2.a27282>.

In the context of Indonesia, there is growing interest in developing a more culturally sensitive and appropriate legal framework for intellectual property rights that reflects the country's rich cultural heritage. Islamic legal principles are one potential source for developing such a framework, given that Indonesia is a predominantly Muslim country with a strong Islamic legal tradition. Islam's pervasive influence on the daily lives of Indonesians can serve as a powerful tool to promote greater awareness and understanding of intellectual property, especially in the context of communal knowledge and shared cultural heritage.

Previous studies have explored the relationship between intellectual property and Islamic law, providing valuable insights that can be utilized as the ground understanding of key Islamic law concepts for this study. A study provided the basic understanding regarding the interplay between Islamic Law and intellectual property rights, by highlighting the challenges and potential compatibilities in aligning modern intellectual property frameworks with Islamic jurisprudence principles.¹⁰ Despite the lack of explicit recognition of modern intellectual property rights in classical Islamic texts, the study suggests that the principles of justice, fairness, and the encouragement of beneficial knowledge in Islam can be interpreted to support the protection of intellectual endeavors. Furthermore, the study also emphasized the importance of implementing relevant principles that can help the enforcement of the law and how it's accepted in the lives of the people, such as the principles of social justice and the common good, which are emphasized in Islamic legal tradition. This is supported by another study, which highlights that the concept of common good and social justice are the key elements of *Maqasid Al-Shariah*, which also plays a role in the dynamics of intellectual property.¹¹

The existing literature on communal intellectual property rights in Indonesia is limited, particularly from an Islamic perspective, which can be attributed to the lack of direct and explicit recognition of IPR within Islamic Law. This is highlighted in a study that further examines the application of Intellectual Property Rights (IPR) within Islamic contexts, focusing specifically on how Sharia law can accommodate modern IPR through existing principles of ownership and morality, despite the lack of direct and explicit recognition.¹² The study discusses the potential of Islamic legal theory to adapt to contemporary needs by integrating IPR with Islamic concepts of justice and morality,

¹⁰ Rehana Anjum, "An Introduction of Intellectual Property Rights in Islamic Law," *SSRN Electronic Journal*, 2019, 1–21, <https://doi.org/10.2139/ssrn.3397868>.

¹¹ Mohammed El Said, "Intellectual Property, Islamic Values, and the Patenting of Genes," in *Patents on Life: Religious, Moral, and Social Justice Aspects of Biotechnology and Intellectual Property*, 2019, 133–51, <https://doi.org/10.1017/9781108659802.008>.

¹² Meirison Meirison and Zerly Nazar, "Intellectual Property Rights and Monopoly in the Perspective of Islamic Jurisprudence," *Al-Ahkam* 31, no. 1 (April 2021): 49–68, <https://doi.org/10.21580/ahkam.2021.31.1.6656>.

suggesting that while the direct recognition of IPR in Islamic texts is limited, the principles underlying Sharia can be interpreted to support the protection of intellectual endeavors in a way that aligns with modern legal systems.

While Islamic Law itself is not a foreign concept to the Indonesian society, there is a lack of research on the legal and practical implications of implementing the values it brings to develop a specific intellectual property regime, particularly one like communal IPR which brings forth unique inherent values. This research seeks to address this gap by exploring the potential for developing a more culturally sensitive and appropriate legal framework for intellectual property rights in Indonesia. Communal Intellectual Property (CIP) Rights as a recognized regime of IPR in Indonesia is the main focus of this study, which ultimately seeks to reconcile the values offered by the Islamic Law with the elements of CIP, to promote the establishment of a more culturally sensitive IPR environment that values communal ownership. The significance of this research lies in the fact that it explores the integration of communal intellectual property regimes within Indonesia's legal framework, aiming to establish a system that aligns with both Islamic principles and the unique cultural dynamics of Indonesian society. Other than legal development, this research can also help expand the discourse regarding the protection of cultural knowledge and heritage, which are held dear by many Indonesian communities..

This study employs the normative legal research method to analyze the relevant norms within the existing positive laws.¹³ Normative legal research method, in its purest form, typically involves the analysis of secondary data in the form of primary law sources.¹⁴ The legal norms extracted from the relevant primary law sources are then analyzed in relation to the topic of this study, which is communal intellectual property. With this method, this study aims to find the discrepancies within the Indonesian intellectual property law system, particularly in how it can help support the protection of CIP. To enrich the analysis and provide a wider viewpoint with the hope of providing insights on how to enhance the current legal framework for CIP, this study crucially looks to utilize the lens Islamic Law, with the relevant Islamic Law doctrines and principles.¹⁵ The Islamic perspective, particularly *Maqasid al-Shariah*, is particularly relevant in this context, considering the fact that CIP is communally owned. This contrast from the common individualistic Western IPR legal tradition can provide key insights into the protection of communal values that

¹³ Hari Sutra Disemadi, "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies," *Journal of Judicial Review* 24, no. 2 (2022): 289–304, <https://doi.org/10.37253/jjr.v24i2.7280>.

¹⁴ David tan, "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum," *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 5 (2021): 1332–36, <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601>.

¹⁵ Faisar Ananda Arfa and Watni Marpaung, *Metodologi Penelitian Hukum Islam*, Prenadamedia Group, Revision (Jakarta: Prenadamedia Group, 2017).

are deeply embedded within cultural knowledge and heritage. Secondary data used in this research include the 1945 Constitution and Government Regulation No. 56 of 2022 on Communal Intellectual Property.

Discussion

Islamic Insights: Unveiling Intellectual Property Rights

Islamic law, or Sharia, is a comprehensive system of law derived from the Quran and the Sunnah (the practice and sayings of Prophet Muhammad). Intellectual property is a relatively new concept, but it has become increasingly relevant in modern times. Islamic legal scholars have been discussing and developing theories on intellectual property rights in recent years, and this essay will explore some of these theories. The premise of Islamic law, among many sources of norms in Indonesian society, can provide important insights on intellectual property rights at general.¹⁶

The emergence and evolution of modern intellectual property systems are attributed to the West, where Western philosophical ideas, particularly natural rights and utilitarian ethics, have influenced and continue to influence the development of global intellectual property regulations and policies. During the 19th century, the major European colonial powers initiated and shaped the intellectual property standard setting. However, after World War II, the United States strengthened its position as the dominant economy and the largest exporter of knowledge and cultural products. While the European influence focused mainly on protecting creators' natural rights, the US approach viewed intellectual property as a utilitarian bargain. Utilitarianism posits that intellectual property serves as a means of encouraging individuals to invest in the production of intellectual products, such as software, movies, and drugs, which in turn leads to increased societal wealth.

The pressing need for an alternative perspective on the global intellectual property regime is not only a matter of theoretical inquiry, but also arises due to the significant shortcomings in the commonly cited policy justifications for global intellectual property policymaking, and their detrimental impact on human development, particularly in developing nations. The assertion that characterizes intellectual property rights in knowledge and culture as a just remuneration for intellectual labor is intrinsically flawed, as it fails to explain why property rights constitute the most appropriate form of compensation for intellectual creativity. Furthermore, this notion overestimates the comparative creative abilities of authors and inventors.

Islamic legal scholars have also developed various theories on intellectual property rights, including the "utilitarian" and the "moral" theories.

¹⁶ Anjum, "An Introduction of Intellectual Property Rights in Islamic Law."

The utilitarian theory argues that intellectual property rights are necessary to provide an incentive for innovation and creativity, as individuals will not invest time and resources into developing new ideas if they cannot be assured of reaping the benefits of their work.¹⁷ The moral theory, on the other hand, argues that intellectual property rights are grounded in natural law and that individuals have a right to control the use of their creations. This came from the basic theological understanding that that God not only made the world and the people in it, but also made the rules we take for granted.¹⁸

Perhaps a more concrete and modern attempt to integrate intellectual property into Islamic Law along with its principles, as thought by some scholars, is to examine the TRIPS Agreement in light of the concept of *ordre public*. The interpretation of this concept in the context of the TRIPS Agreement necessitates the establishment of a comprehensive rule for its interpretation, which in turn requires a rigorous public discourse among Islamic jurists, scholars, and theologians. Ultimately, any decision regarding the application of *ordre public* in intellectual property matters should be made at the national level, taking into account the unique social and cultural contexts of individual Muslim-majority countries.¹⁹

Islamic law also recognizes the importance of balancing individual rights with the public good. One way this is achieved is through the concept of "*maslahah*," or public interest.²⁰ The principles of *maslahah* emphasize that the law should promote the public interest and serve the welfare of society as a whole. This concept is particularly relevant to intellectual property, where the public interest is often at odds with the interests of private property owners. *Maslahah* here plays a critical role as the analytical standpoint to establish a more concrete *sharia* position on the topic of intellectual property. The concept of *maslahah* was explained by Al-Buthi as the attainment of benefits that are the ultimate goal of the *syāri'* (Allah and His Messenger) for their servants, with the intention of safeguarding their religion, soul, intellect, lineage, and property, in accordance with the extent of its usefulness.²¹

¹⁷ Kawthar Abdalla Bayoumi and Arieff Salleh Rosman, "Framing an Islamic Vision of Intellectual Property: Maqasid - Based Approach," *UMRAN - International Journal of Islamic and Civilizational Studies* 5, no. 3 (2018): 25–40, <https://doi.org/10.11113/umran2018.5n3.220>.

¹⁸ Mark A. Lemley, "Faith-Based Intellectual Property," *UCLA Law Review*, 2015, <https://doi.org/10.2139/ssrn.2587297>.

¹⁹ Tabrez Ebrahim, "Intellectual Property Through a Non-Western Lens: Patents in Islamic Law," *Georgia State University Law Review* 37, no. 3 (July 2021): 789–903.

²⁰ Hari Sutra Disemadi et al., "Intellectual Property Synergies: Merging Halal Certification with Indonesian Communal Intellectual Property Rights Laws," *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (February 2024): 16–32, <https://doi.org/10.22219/ljih.v32i1.30143>.

²¹ Moh Mujibur Rohman, "The Benefit Principles of *Istibdāl* on Wakaf Objects: (Analysis of Dhawābith Al-Mashlahah Saʿīd Ramadhān Al-Būthī)," *Jurnal Mabkamah: Kajian Ilmu*

In terms of specific intellectual property rights, Islamic legal scholars have discussed patents, copyrights, and trademarks. Patents are seen as a way to protect new inventions, but they are also subject to limitations. Islamic law recognizes that patents should not be granted for things that are harmful to society, such as weapons of mass destruction or addictive drugs. Copyrights are seen as a way to protect the rights of authors and to ensure that they are fairly compensated for their work. Trademarks are seen as a way to protect the reputation and goodwill of businesses and to prevent unfair competition. These principles centers on the concept of protecting the interests of authors, which is essentially the same as the philosophy of intellectual property introduced by the west. Under the Islamic Law, fundamentally, intellectual property rights in the form of patents, trademarks, copyrights, and others are seen as one of the *huquq maliyyah* (property rights). They have legal protection (*mashun*) like *mal* (wealth) then someone who consciously uses or transacts counterfeit products on patents, trademarks, copyrights, and others illegally has committed an injustice, and this action is unlawful.²²

Islam as a religion and a culture also has a massive amount of legacy in the Indonesian society. The influence of Islam in Indonesia is evident in numerous indigenous literary works composed in various local languages. As a result, Islamic intellectual property is widely inherited and undergoes a process of localization and contextualization. This process plays a pivotal role in fostering the development and reinforcement of the *wasathiyah* tradition of Islam in Indonesia. This tradition, deeply entrenched in Indonesian society, can be further cultivated to promote harmony amidst diverse perspectives.²³

Therefore, it's fair to say that Islam itself is a credible source of law not only to govern the things that are already governed by Islamic Law and recognized by the state of Indonesia, but also the sphere of intellectual property rights which so far has only been regulated according to the western principles and philosophies. Islam as the biggest religion in Indonesia, which also happens to be the country with the biggest Muslim population in the world, can help society adapt and understand the laws of intellectual property rights. The huge influence that Islam has on Indonesian society can help the government facilitate the socialization and education regarding the importance of intellectual property in Indonesia to many Indonesians, as supposed to western based approach which might be foreign to some Indonesians.

Hukum Dan Hukum Islam 6, no. 1 SE-Articles (June 2021): 17–36, <https://doi.org/10.25217/jm.v6i1.1246>.

²² Iva Faizah and Zulfa Ahmad Kurniawan, “Interrogating Islamic Law and Positive Law Against Counterfeit Products in the Consumer Society,” *Al’Adalah* 25, no. 2 SE- (December 2022): 167–86, <https://doi.org/10.35719/aladalah.v25i2.311>.

²³ Arifinsyah Arifinsyah, Safria Andy, and Agusman Damanik, “The Urgency of Religious Moderation in Preventing Radicalism in Indonesia,” *ESENSIA: Jurnal Ilmu-Ilmu Ushuluddin* 21, no. 1 (2020): 91–108, <https://doi.org/10.14421/esensia.v21i1.2199>.

Refining *Maqasid al-Sharia* in Intellectual Property: Debunking Misconceptions and Conceptual Imperfections

The concept of *Maqasid al-Sharia* has long been recognized as a crucial framework for understanding the objectives of Islamic law. It provides guidance on how the Sharia should be interpreted and applied to meet the ultimate goals of preserving faith, life, intellect, lineage, and property. In recent years, there has been a growing interest in applying the concept of *Maqasid al-Sharia* to the realm of intellectual property rights (IPR) to ensure that the creation, protection, and exploitation of intellectual assets align with Islamic values and objectives. However, the application of *Maqasid al-Sharia* in the context of IP has been subject to numerous misconceptions and conceptual flaws, which have hindered its effective implementation.

Maqasid al-Sharia is a concept that rationalizes the deliberation of laws for all affairs of human beings, both for this worldly life and the afterlife.²⁴ It emphasizes the higher objectives or purposes of the Islamic legal system.²⁵ The concept recognizes that Islamic law is not just a set of legal rules and regulations but is rather a comprehensive system that seeks to promote the welfare and well-being of human beings, both individually and collectively.²⁶ The main objective of *Maqasid al-Sharia* is to ensure that Islamic law serves the common good, promotes justice, equality, and human dignity, and protects the rights and interests of all members of society. The concept of *Maqasid al-Sharia* is based on the principles of the Quran and the Sunnah, and it provides a framework for Islamic legal scholars and practitioners to interpret and apply Islamic law in a manner that is relevant and meaningful to contemporary society.

Maqasid al-Sharia has significant implications for the continuation of society according to Sharia. By emphasizing the higher purposes of Islamic law, the concept encourages a flexible and adaptable legal system that can respond to the changing needs and circumstances of society. This is echoed by Qayyim al-Jauziyyah who believed that Islamic law has the ability to evolve and adjust to changing circumstances and can effectively deal with new challenges that arise over time. He argued that the nature of Islamic law is dynamic and flexible, allowing it to withstand the continuous evolution of society and the emergence

²⁴ Ibrahim et al., “Maqasid Al-Shariah Based Islamic Bioethics: A Comprehensive Approach.”

²⁵ Ahmad Shazrin Mohamed Azmi et al., “Synthesizing the Maqasid Al-Syariah for the Waqf Property Development,” *IOP Conference Series: Earth and Environmental Science* 385, no. 1 (November 2019): 1–7, <https://doi.org/10.1088/1755-1315/385/1/012051>.

²⁶ Norfaizah Othman, Ummi Munirah Mohamad Zan, and Fadilah Mat Nor, “Investigating Rationales of Maqasid-Shariah and Well-Being Indicator for B40 Households,” in *The International Islamic Economic System Conference - The 9th IIECONS 2021*, 2021, 177–85.

of novel issues.²⁷ It recognizes that Islamic law must be applied in a manner that is relevant and meaningful to contemporary society and that the objectives of Islamic law can only be achieved if it is interpreted and implemented in a way that promotes the common good.

The concept of *Maqasid al-Sharia* is particularly relevant in the modern world, where new challenges and issues are constantly emerging, and where the legal system must be able to respond to these challenges in a way that promotes justice and equality. In this sense, *Maqasid al-Sharia* provides a means for the continued relevance and applicability of Islamic law in the modern world, ensuring that the legal system remains responsive to the changing needs and circumstances of society while continuing to promote the welfare and well-being of all members of the community.²⁸ Overall, *Maqasid al-Sharia* is a vital concept in Islamic jurisprudence that serves as a guiding principle for the interpretation and application of Islamic law, ensuring that the law continues to serve the common good and promote justice and equality in society.

One common misconception is that IPR is Western inventions that are inconsistent with Islamic values and objectives. This view is based on the assumption that IPR is rooted in individualism and capitalism, which are foreign concepts to Islamic societies. However, this view is flawed as it overlooks the fact that IPR have a long history in Islamic civilization, dating back to the Islamic Golden Age.²⁹ Furthermore, IPR can be reconciled with Islamic values and objectives, such as the protection of knowledge, innovation, and creativity, and the promotion of social and economic welfare.

From the Islamic perspective, particularly through the lens of *Maqasid al-Sharia*, the protection of IPR in the modern world is imperative, as it can play a key role in fostering creativity. By safeguarding intellectual property, a legal system can subsequently uphold the objectives of preserving intellect (*hifz al-aql*) and protecting wealth (*hifz al-mal*), both of which are fundamental aims of the *Maqasid al-Sharia*. This has its root in the Qur'an, which emphasizes the importance of justice and the rightful ownership of one's earnings: "*And do not consume one another's wealth unjustly*" (Qur'an 2:188).³⁰ Thus, by integrating IPR protection within the framework of Islamic law, Indonesia can promote a just and equitable society that values and nurtures intellectual contributions,

²⁷ Asrul Hamid and Dedisyah Putra, "The Existence of New Direction in Islamic Law Reform Based on The Construction of Ibnu Qayyim Al-Jauziyah's Thought," *Juris: Jurnal Ilmiah Syariah* 20, no. 2 (2021): 247–57, <https://doi.org/10.31958/juris.v20i2.3290>.

²⁸ Hamid and Putra.

²⁹ Alireza Naghavi, "Islam, Trade, and Innovation," in *Advances in the Economics of Religion*, 2019, 449–60, https://doi.org/10.1007/978-3-319-98848-1_28.

³⁰ Abdullahi Saliu Ishola, Isa Olawale Solahudeen, and Ibrahim Akangbe, "Intellectual Property Rights for Innovations on the Internet: The Islamic Law Requisites," *Arab Law Quarterly* 32, no. 4 (2018): 517–30, <https://doi.org/10.1163/15730255-12324046>.

ultimately fulfilling the higher objectives of Shariah in enhancing human welfare and promoting societal advancement.

Another misconception is that IPR is absolute and unrestricted, which means that IP owners have unlimited control over their intellectual assets. This view is inconsistent with the concept of *Maqasid al-Shariah*, which emphasizes the importance of balancing individual rights with public interests.³¹ In the context of IP, this means that IPR should be subject to reasonable limitations and exceptions to ensure that they do not hinder the achievement of *Maqasid al-Shariah* objectives, such as access to knowledge, public health, and cultural diversity. The western concept of IPR is not entirely individualistic, as it has limitations which are based on the concept of social justice. Similarities can be found in the Islamic concept of social justice which dictates that society's basic structure must provide equal fulfillment of basic needs compatible with *Maqasid*, alongside a strong commitment to ensuring fair equality of opportunity. If allowing for inequalities becomes necessary to increase the production of goods and wealth, steps must be taken to prevent an excessive concentration of power and resources. Instead, the focus should be on continually adjusting these inequalities to improve the income of the least well-off and promote fair equality of opportunity.³²

Another misconception on IPR at general is that IPR is absolute and unrestricted, which means that IP owners have unlimited control over their intellectual assets to have monopoly over a creative idea in an industry. Not only does this view goes against the western-based IPR system, this view is also inconsistent with the concept of *Maqasid al-Shariah*, which emphasizes the importance of balancing individual rights with public interests. In the context of IP, this means that IPR should be subject to reasonable limitations and exceptions to ensure that they do not hinder the achievement of *Maqasid al-Sharia* objectives, such as access to knowledge, public health, and cultural diversity. This is in line with the fact that IPRs are protected in limited times, which differs according to the regime it belongs to and the laws behind it. Owners of intellectual property have limited and not absolute rights. The goal is that people can enjoy and take advantage of their works. A general rule regarding this in Islamic law is "income is compensation against the risk of bearing guarantees."³³

A problem in realizing *Maqasid al-Shariah* in the context of IP can rise in the effort to define and prioritize the relevant objectives. There are five (5)

³¹ Ibrahim et al., "Maqasid Al-Shariah Based Islamic Bioethics: A Comprehensive Approach."

³² Ezieddin Elmahjub, *An Islamic Vision of Intellectual Property: Theory and Practice*, Cambridge University Press, 2019, <https://doi.org/10.1017/9781316863398>, p. 108.

³³ Meirison and Nazar, "Intellectual Property Rights and Monopoly in the Perspective of Islamic Jurisprudence."

Maqasid of the Islamic Law (Shariah), which consists of Protection of life, protection of property, protection of health, protection of religion, and protection of dignity.³⁴ Although the five *Maqasid* are well-established, their practical application in the context of IP can be ambiguous and contested. For example, how should the objective of preserving faith be reconciled with the protection of intellectual property that may be used for immoral or unethical purposes? Similarly, how should the objective of promoting economic welfare be balanced with the need to ensure access to essential medicines and technologies?

Another conceptual flaw is the lack of consistency in interpreting and applying *Maqasid al-Sharia* in the context of IP. The diverse interpretations of *Maqasid al-Sharia* among scholars and jurists can lead to conflicting views on the compatibility of IPR with Islamic values and objectives. Moreover, the lack of a standardized methodology for applying *Maqasid al-Sharia* in the context of IP can result in inconsistent and arbitrary outcomes. Therefore, there is a need for greater consensus and coherence in the interpretation and application of *Maqasid al-Sharia* principles to ensure their effective implementation in the context of IP.

Despite misconceptions that Islamic Law is rigid and unchanging, the concept of *Maqasid* can actually be expanded to encompass additional basic needs beyond the traditional categories. For instance, basic human rights and freedom could be included under the first principle. Through research and *istiqra* from textual sources and Islamic traditions, we can improve our understanding of these additional categories of basic needs that should be protected as objectives of Islamic law. This would make the concept of *Maqasid* more versatile and applicable to contemporary issues. Islamic texts thus serve as a valuable medium for identifying and addressing emerging issues related to basic human needs and rights, and for adapting Islamic law to modern realities.³⁵ With the rise of digitalization process and how heavily integrated those processes into the daily lives of many people today, this flexibility allows more room for normative construction in the Indonesian legal system to protect intellectual property in many digital spaces.

The most often repeated and perhaps the most crucial misconception regarding *Maqasid al-Sharia* in the context of IP is the over-emphasis on the benefits for everyone in a society. This doesn't mean that *Maqasid al-Shariah* can be used to take over registered IPR with the justification of equal opportunity for all. Rather, *Maqasid al-Sharia* also emphasizes the importance of individual

³⁴ Usman Safiyanu Duguri et al., "The Application of Maqasid Al-Shari'ah in the Foreign Policy of Islamic States," *International Journal of Academic Research in Business and Social Sciences* 11, no. 3 (2021): 1–9, <https://doi.org/10.6007/ijarfbss/v11-i3/8559>.

³⁵ Elmahjub, *An Islamic Vision of Intellectual Property: Theory and Practice.*, p. 98.

rights, which can make up a significant portion of how a legal culture develops in a society. When a registered IPR can easily be infringed without any legal basis in the name of equal opportunity for all, this can create a bad legal culture and will inevitably affect the number of innovations in the future by suppressing creativity. Creating a bad legal culture on IP has been shown to have significant impact not only on the market, but also on the society overall, especially with the rise of online commerce which has increased the level of consumerism in Indonesia.³⁶ Islamic law through its principles can also provide a way to deal with the bad legal culture that is currently developing in Indonesia, especially the one on intellectual property.³⁷

Connecting Islamic Legal Values for Communal Intellectual Property

Al-Mal, or wealth, is an important concept of Islamic philosophy and is closely intertwined with the broader principles of *Maqasid al-Shariah*. These principles guide Islamic law, which aims to promote the welfare and flourishing of the community as a whole through the basic concept of social welfare. Based on the concept of *Maqasid al-Shariah*, *mal* can't be used in any form that is absolute, which may negatively impact Islamic Law's social aims. On the other hand, Islamic Law through the application of *Maqasid al-Shariah* also recognized the importance of protecting *mal*. Because the protection of property (*hifz al-mal*), is one of the essential *Maqasid*.³⁸ This is in line with the concept of intellectual property rights, as the emphasize on rights here includes the needs for protection.

In the realm of Islamic ideology, the concept of wealth is not viewed as an ultimate goal, but rather as a tool to achieve a wider range of important elements for social welfare.³⁹ The notion of *Maqasid al-Shariah*, which comprises a comprehensive list of objectives for Islamic law, reflects this perspective. These objectives are deemed vital for the well-being of individuals and society as a whole, and they provide a structure for comprehending how Islamic law can serve the common good. By emphasizing the importance of wealth as a means to attain broader societal goals, Islamic thought promotes the notion of using resources for the greater good, which can help create a just and equitable society. *Mal* (wealth) in the concept of Islamic Law doesn't exist just for the welfare of the individual who owns it, but also for the well-being of all, as it

³⁶ Muhammad Deovan Reondy Putra and Hari Sutra Disemadi, "Counterfeit Culture Dalam Perkembangan UMKM: Suatu Kajian Kekayaan Intelektual," *KRTHA BHAYANGKARA* 16, no. 2 (September 2022): 297–314.

³⁷ Faizah and Kurniawan, "Interrogating Islamic Law and Positive Law Against Counterfeit Products in the Consumer Society."

³⁸ Idris Nassery, Rumeed Ahmed, and Muna Tatari, *The Objectives of Islamic Law: The Promises and Challenges of the Maqasid Al-Shari'a*, vol. 1 (London: Lexington Books, 2018), p.20.

³⁹ Sarimah Basah and Putri Rozita Tahir, "Towards Acceptance of Islamic Wealth Management," *Journal of Islamic, Social, Economics and Development (JISED)* 4, no. 24 (2019): 14–21.

should be circulated in the community.⁴⁰ This crucial emphasize on community is what makes it important to differentiate the characteristics of Islamic Law with those of the western law.

Therefore, goal of preserving wealth in Islamic ideology is intricately linked to the concept of communal intellectual property. As the existence of individual *mal* (wealth) needs to also benefit community, wealth that belongs to a community has an even bigger emphasize on community itself. In this regard, Islamic thought regards knowledge and innovation as communal resources that ought to be shared for the benefit of all. This emphasis on the public good is reflected in Islamic law, which emphasizes the obligation of individuals to contribute to the well-being of their communities.⁴¹ By promoting the idea of communal ownership of knowledge and innovation, Islamic thought encourages the sharing of resources for the common good. This approach can help create a just and equitable society, where resources are distributed fairly and everyone has an opportunity to thrive. Although this perspective is commonly used to connect social welfare to physical properties, it can be connected to the concept of intellectual property through the recognition of *huquq maliyyah* (property rights).⁴²

Indigenous communities' traditional knowledge, which includes expressions, cultural artifacts, ideas, and know-how that have been developed and passed down through generations, are not afforded legal protection under current international intellectual property (IP) instruments due to their failure to meet the standards of patentability and originality.⁴³ This is problematic, considering the fact that one of the biggest resources in Indonesia is its cultural diversity, which has contributed a lot to the country's economic growth through many forms of creations and influence on innovations.⁴⁴

The emphasis placed on communal intellectual property within Islamic ideology has significant ramifications for how Islamic societies deal with issues relating to innovation and intellectual property rights. In contrast to Western

⁴⁰ Jamaluddin Uddin, Irwan Misbach, and Abdul Wahab, "The Distribution of Zakat Mal Based on Al-'Adl in Order to Improve The Welfare of The Mustahiqs in The Laznas of Baitul Mal Hidayatullah South Sulawesi," *Al-Ulum* 20, no. 1 (May 2020): 233–51, <https://doi.org/10.30603/au.v20i1.1146>.

⁴¹ Nur Adhim, Sukirno Sukirno, and Muh. Mahfud, "The Social Function Of Land In Liberal And Islamic Law Perspective," in *The Social Function Of Land In Liberal And Islamic Law Perspective (ICIDS 2019)*, 2019, 1–5, <https://doi.org/10.4108/eai.10-9-2019.2289346>.

⁴² Faizah and Kurniawan, "Interrogating Islamic Law and Positive Law Against Counterfeit Products in the Consumer Society."

⁴³ Elmahjub, *An Islamic Vision of Intellectual Property: Theory and Practice.*, p. 112.

⁴⁴ Fajar Ramdhani Setyawan, Sudarsono Sudarsono, and Yuliati Yuliati, "Teori Ajaran Cita Hukum (Idee Das Recht) Di Dalam Perlindungan Ekspresi Budaya Tradisional Di Indonesia," *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 1 (June 2021): 126–39, <https://doi.org/10.18860/j-fsh.v13i1.10025>.

societies, where the protection of individual rights and interests is often the focus of intellectual property laws, Islamic societies view intellectual property as a tool to advance the common good. This perspective places a greater emphasis on the benefits that can be achieved by sharing knowledge and innovation rather than on exclusive ownership and control. The approach to intellectual property in Islamic societies reflects a broader commitment to using resources for the betterment of society as a whole. By prioritizing the common good over individual interests, Islamic thought advocates for a more equitable and just distribution of resources, which can help to promote social harmony and well-being.

The emphasis placed on communal intellectual property in Islamic thought is evident in the legal principle of *ijtihad*, which allows individuals to engage in independent reasoning and innovation for the purpose of contributing to the common good. This principle reflects the importance of shared knowledge and creativity in Islamic societies, where intellectual property is viewed as a means of advancing public welfare rather than individual interests. In addition to *ijtihad*, the concept of *waqf*, or endowment, is another example of this communal approach to resources. *Waqf* is a mechanism for preserving wealth for communal use, and it is often used to support public goods such as education, healthcare, and social services. This emphasis on communal ownership and control of resources reflects a broader commitment to social justice and equality in Islamic societies, which prioritize the well-being of the community over individual interests. By encouraging the sharing of knowledge and resources, Islamic thought promotes a more equitable and just society, where everyone has access to the tools and resources needed to thrive.

The emphasis on communal intellectual property in Islamic thought holds significant implications for how we understand innovation and creativity. Rather than seeing innovation as a tool to promote individual interests and profit, Islamic thought regards it as a means of advancing the common good. This requires a shift in our perspective away from the dominant individualistic and profit-driven approach that characterizes Western societies, towards a more collaborative and communal outlook that emphasizes the significance of shared resources and the public good. By prioritizing the common good, Islamic thought advocates for a more equitable and just approach to innovation and creativity, where everyone has an opportunity to benefit from the fruits of human ingenuity. This approach encourages collaboration and cooperation, fostering an environment where individuals can work together to solve problems and create new solutions. Ultimately, this can lead to a more sustainable and prosperous society, where resources are used in a way that benefits everyone, not just a privileged few.

Connecting these core concepts are also important to clear up misconceptions, especially regarding *Maqasid al-Shariah* and how it can be used

to infringe IPR. Communal intellectual property here stands right in the middle of the principles of western intellectual property and Islamic intellectual property as it naturally values the importance of community and social welfare while also recognizing individual benefits that may play in hand. Developing a legal framework for this is crucial in Indonesia, as it can benefit Indonesia's multicultural society and protect national identity in this globalization era.

Enhancing Communal Intellectual Property within Indonesian Legal Framework: Embracing *Maqasid al-Sharia* Values

Indonesia as a country with a civil law legal system uses many laws and regulations to govern the lives of Indonesians. For the legal framework of IPR, Indonesia uses laws as the main sources of provisions for many forms IPR regimes. The field of intellectual property is one of the most developed fields of law in the Indonesian legal system, with three of the regimes' laws enacted within the last decade (Copyrights, Trademarks and Geographical Indications, and Patents). Unfortunately, the legal source that governs the regime of communal intellectual property is based on a source of law that is lower in the hierarchy of laws and regulations in the Indonesian legal system, which is Government Regulation.

As previously noted, the acknowledgement of Islamic principles and their alignment with the terminology used in the field of intellectual property law has revealed that the Sharia contains values that can be utilized to promote the creation, growth, and implementation of intellectual property regimes in Indonesia. This recognition highlights the potential for Islamic law to support the protection and exploitation of intellectual property rights, which in turn can foster innovation, creativity, and economic development. This enhancement is urgently needed as communal intellectual property is at risk of exploitation for commercial purposes.⁴⁵ By incorporating Islamic values into the framework of intellectual property law, Indonesia can create a legal system that is both effective and compatible with the country's cultural and religious norms. This approach can also help to address concerns about the potential negative impact of intellectual property regimes on access to knowledge and public health. The recognition of Islamic values in intellectual property law represents a significant step towards creating a legal system that reflects the needs and values of the Indonesian people, and that can support sustainable and equitable development in the country.

Maqasid al-Sharia is a set of overarching objectives that guide Islamic law and promote the well-being of individuals and society as a whole. It can also be

⁴⁵ Hari Sutra Disemadi and Lu Sudirman, "Unleashing Indonesia's Traditional Knowledge: Navigating Legal Challenges in a Changing Landscape," *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (June 2023): 33–46, <https://doi.org/10.30631/alrisalah.v23i1.1334>.

employed as a concept to analyze the purpose of establishing certain laws. One of these objectives of *maqasid al-Sharia* is the preservation of wealth, which is closely linked to the idea of communal intellectual property. In the context of Indonesian legal framework, communal intellectual property is viewed as a communal resource that should be shared for the benefit of all. The incorporation of *maqasid al-sharia* into the Indonesian legal framework can thus promote the establishment of intellectual property regimes that prioritize the public good over individual interests. Such a framework can enable the development of communal intellectual property that is accessible to all and contributes to the advancement of society as a whole. Moreover, this can foster a collaborative approach to innovation that emphasizes the importance of shared resources and public good. Therefore, the incorporation of *Maqasid al-Shariah* values can help Indonesian society to establish intellectual property laws that promote the public good and support communal intellectual property.

First, it's important to analyze the values that *Maqasid al-Shariah* present and how it can affect the existing law regarding communal intellectual property in Indonesia. This is particularly important because knowledge of *Maqasid al-Shariah* can lead to the essence and function of a particular law, and brings clarity on its implications.⁴⁶ Indonesia currently uses Government Regulation No. 56 of 2022 on Communal Intellectual Property (Government Regulation on CIP), which was enacted on December 20th 2022, as the first legal basis for communal intellectual regime within the Indonesian legal system.

Table 1: Comparisons of Values Between *Maqasid al-Shariah* and Indonesia's Government Regulation on CIP.

No	Five <i>daruriyyat</i> <i>Maqasid</i>	Government Regulation on CIP
1	Respect for and promotion of life	-Article 2 Protection, preservation, development and use of CIP must be in accordance with the values contained in Pancasila and <i>Undang-Undang Dasar Negara Republik Indonesia</i> L945 (UUD 1945)
2	Protection and promotion of the values of religion and morality	-Article 1 Communal Intellectual Property, hereinafter abbreviated as CIP, is intellectual property whose ownership is communal in nature and has economic value while upholding the nation's moral, social and cultural values;

⁴⁶ Asa'ari et al., "Urgensi Pemahaman Terhadap Maqashid Al-Syari'ah Dan Perubahan Sosial Dalam Istinbath Al-Ahkam," *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 2 (2021): 222–39, <https://doi.org/10.18860/j-fsh.v13i2.13818>.

		<p>-Article 2; -Article 6 letter e Traditional Cultural Expressions as referred to in Article 4 letter a have the following characteristics: e. Provide awareness of identity, sustainability, and promote respect for cultural diversity and creativity. Article 33 paragraph (1) letter c Everyone can take advantage of the CIP contained in the Indonesian CIP information system with the following conditions: c. (must) pay attention to the values that live in the community that bears it.</p>
3	Promotion of rationality, knowledge, and thoughtful conduct	<p>-Article 2; -Article 33 paragraph (1) letter c</p>
4	Promotion of property and wealth management	<p>-Article 1 number 7 Communities of Origin are customary law communities and/or local communities that produce, protect, maintain, and/or develop CIP communally and across generations, including supporting communities; -Article 32 paragraph (1) Everyone in the Community of Origin can submit an objection to the Minister against the CIP contained in the Indonesian CIP information system in the event that the CIP is not in accordance with the values, meaning, identity of CIP, and/or social institutions that apply in the Community of Origin.</p>
5	Protection of the family and progeny	<p>-Article 1 number 7 Communities of Origin are customary law communities and/or local communities that produce, protect, maintain, and/or develop CIP communally and across generations, including supporting communities; -Article 32 paragraph (1) Everyone in the Community of Origin can submit an objection to the Minister against the CIP contained in the Indonesian CIP information system in the event that the CIP is</p>

not in accordance with the values, meaning, identity of CIP, and/or social institutions that apply in the Community of Origin.

Data Source: Idris Nassery, Rumea Ahmed, and Muna Tatari, *The Objectives of Islamic Law: The Promises and Challenges of the Maqasid Al-Shari'a*, vol. 1 (London: Lexington Books, 2018); Indonesian primary law sources.

The table above shows the conceptual relationship between Islamic Law's *Maqasid al-Shariah* and Indonesia's regulation on CIP. The table shows that the values introduced by *Maqasid al-Shariah* are indeed in line with the existing regulation on CIP in Indonesia. The first of the five essential *Maqasid*, the respect for and promotion of life is perhaps the most general among the other four. This concept is in line with the values introduced by Pancasila, which is used as the main source and spirit of UUD 1945. The first conceptual issue within the Indonesia's Government Regulation on CIP is the absence of religious values from the provision of Article 1. This is conceptually and constitutionally flawed as Indonesia recognizes religious values as an essential part of the Indonesian society, as mentioned in Pancasila and UUD 1945. While it can certainly be argued that the mentioned values might come from religions that are followed by Indonesians, for a country that explicitly states "belief in the one and only God" in its supposed national spirit (*volksgeist*), the importance of mentioning religious values among other values in this provision cannot be overstated.

The promotion of rationality, knowledge, and thoughtful conduct as explained by *Maqasid al-Sharia*, is not fully accepted by this regulation either. Not mentioned by the table, this provision isn't fully in line with the provision in Article 33 paragraph (2), which states that "*In the event that KIK has a sacred, secret and/or strictly held character, the use of KIK as referred to in paragraph (1) must obtain permission from the Community of Origin.*" The concept isn't fully in line with this regulation because while it provides stronger protections for CIPs that are considered to be sacred, this can also be abused by communities of origin as there's no further provision that explains what constitutes a CIP as "sacred" and what unique legal consequences does it make. This problem is essentially conflicting with the concept of rationality and conduct. In Islamic Law, rationality has to be based on valid authorities or sources to have validity.⁴⁷

Promotion of property and wealth management according to *Maqasid al-Shariah* here is in line with the Government Regulation on CIP, although it's lacking in further technical provisions. Nowhere in the Government Regulation does it mention the consequences and legal liability when the state fails to

⁴⁷ Nassery, Ahmed, and Tatari, *The Objectives of Islamic Law: The Promises and Challenges of the Maqasid Al-Shari'a*, p. 14.

protect a CIP, which might have several consequences to many communities of origin in Indonesia. This problem is closely related to the protection of the family and progeny, as it includes the protection of identity, a deeply embedded concept of CIPs. This standpoint offers a novel perspective by examining how integrating *Maqasid al-Shariah* principles can enhance Indonesia's communal intellectual property rights framework, potentially leading to a more culturally-relevant, equitable system for protecting collective knowledge and heritage. Ultimately, there needs to be a comprehensive provision regarding the legal consequences and even criminal provisions to deal with possible infringement cases of CIP in Indonesia, to account for economic and cultural identity loss of communities of origin.

Conclusion

Theoretical analysis of this study found that there are many conceptual correlations between *Maqasid al-Shariah* and communal intellectual property. However, it's also important to recognize the misconceptions and conceptual flaws regarding *Maqasid al-Shariah* to fully utilize Islamic values as one of the sources and inspirations of the Indonesian legal system. Conceptually, communal intellectual property was found to be in the middle of the western and Islamic concept of intellectual property rights. It's also found that, in contrast to the common misconception regarding *Maqasid al-Shariah*, its emphasis on social welfare is closely related to the concept of CIP, as supposed to being used as a means to infringe IPR. Normative analysis also found that the concept of *Maqasid al-Shariah* can be used to further develop and enforce a proper regime of CIP which is still lacking in many ways, namely provision regarding liability, consequences of CIP rights infringement, and the fact that it's still in the form of Government Regulation as opposed to Law.

References

- Adhim, Nur, Sukirno Sukirno, and Muh. Mahfud. "The Social Function Of Land In Liberal And Islamic Law Perspective." In *The Social Function Of Land In Liberal And Islamic Law Perspective (ICIDS 2019)*, 1–5, 2019. <https://doi.org/10.4108/eai.10-9-2019.2289346>.
- Anjum, Rehana. "An Introduction of Intellectual Property Rights in Islamic Law." *SSRN Electronic Journal*, 2019, 1–21. <https://doi.org/10.2139/ssrn.3397868>.
- Arfa, Faisar Ananda, and Watni Marpaung. *Metodologi Penelitian Hukum Islam. Prenadamedia Group*. Revision. Jakarta: Prenadamedia Group, 2017.
- Arifinsyah, Arifinsyah, Safria Andy, and Agusman Damanik. "The Urgency of Religious Moderation in Preventing Radicalism in Indonesia." *ESENSLA: Jurnal Ilmu-Ilmu Ushuluddin* 21, no. 1 (2020): 91–108.

<https://doi.org/10.14421/esensia.v21i1.2199>.

- Asa'ari, Zufriani, Arzam, and Doli Witro. "Urgensi Pemahaman Terhadap Maqashid Al-Syari'ah Dan Perubahan Sosial Dalam Istibath Al-Ahkam." *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 2 (2021): 222–39. <https://doi.org/10.18860/j-fsh.v13i2.13818>.
- Basah, Sarimah, and Putri Rozita Tahir. "Towards Acceptance of Islamic Wealth Management." *Journal of Islamic, Social, Economics and Development (JISED)* 4, no. 24 (2019): 14–21.
- Bayoumi, Kawthar Abdalla, and Arieff Salleh Rosman. "Framing an Islamic Vision of Intellectual Property: Maqasid - Based Approach." *UMRAN - International Journal of Islamic and Civilizational Studies* 5, no. 3 (2018): 25–40. <https://doi.org/10.11113/umran2018.5n3.220>.
- David tan. "Metode Penelitian Hukum: Mengupas Dan Mengulas Metodologi Dalam Menyelenggarakan Penelitian Hukum." *NUSANTARA: Jurnal Ilmu Pengetahuan Sosial* 8, no. 5 (2021): 1332–36. <http://jurnal.um-tapsel.ac.id/index.php/nusantara/article/view/5601>.
- Disemadi, Hari Sutra. "Lenses of Legal Research: A Descriptive Essay on Legal Research Methodologies." *Journal of Judicial Review* 24, no. 2 (2022): 289–304. <https://doi.org/10.37253/jjr.v24i2.7280>.
- Disemadi, Hari Sutra, Abdurrakhman Alhakim, Ninne Zahara Silviani, and Emiliya Febriyani. "Intellectual Property Synergies: Merging Halal Certification with Indonesian Communal Intellectual Property Rights Laws." *Legality: Jurnal Ilmiah Hukum* 32, no. 1 (February 2024): 16–32. <https://doi.org/10.22219/ljih.v32i1.30143>.
- Disemadi, Hari Sutra, and Lu Sudirman. "Unleashing Indonesia's Traditional Knowledge: Navigating Legal Challenges in a Changing Landscape." *Al-Risalah: Forum Kajian Hukum Dan Sosial Kemasyarakatan* 23, no. 1 (June 2023): 33–46. <https://doi.org/10.30631/alrisalah.v23i1.1334>.
- Disemadi, Hari Sutra, Lu Sudirman, David Tan, and Ampuan Situmeang. "The Dichotomy of Traditional Cuisine Protection in Indonesia: Geographical Indications vs. Traditional Knowledge." *Jurnal Hukum Novelty* 14, no. 2 (December 2023): 224–39. <https://doi.org/10.26555/novelty.v14i2.a27282>.
- Duguri, Usman Safiyanu, Mohd Afandi Salleh, Isyaku Hassan, and Mohd Nazri Latiff Azmi. "The Application of Maqasid Al-Shari'ah in the Foreign Policy of Islamic States." *International Journal of Academic Research in Business and Social Sciences* 11, no. 3 (2021): 1–9. <https://doi.org/10.6007/ijarbss/v11-i3/8559>.
- Ebrahim, Tabrez. "Intellectual Property Through a Non-Western Lens: Patents

- in Islamic Law.” *Georgia State University Law Review* 37, no. 3 (July 2021): 789–903.
- Elmahjub, Eziuddin. *An Islamic Vision of Intellectual Property: Theory and Practice*. Cambridge University Press, 2019. <https://doi.org/10.1017/9781316863398>.
- Erlina B., Zainab Ompu Jainah, Melisa Safitri, and Intan Nurina Seftiniara. “Implementation of the Utilization of West Lampung Traditional Cultural Expression in the Legal System Perspective of Intellectual Property.” *ENDLESS: International Journal of Future Studies* 5, no. 3 (2022): 145–55. <https://doi.org/10.54783/endllessjournal.v5i3.99>.
- Faizah, Iva, and Zulfa Ahmad Kurniawan. “Interrogating Islamic Law and Positive Law Against Counterfeit Products in the Consumer Society.” *Al’Adalah* 25, no. 2 SE- (December 2022): 167–86. <https://doi.org/10.35719/aladalah.v25i2.311>.
- Hamid, Asrul, and Dedisyah Putra. “The Existence of New Direction in Islamic Law Reform Based on The Construction of Ibnu Qayyim Al-Jauziyah’s Thought.” *Juris: Jurnal Ilmiah Syariah* 20, no. 2 (2021): 247–57. <https://doi.org/10.31958/juris.v20i2.3290>.
- Ibrahim, Abdul Halim, Noor Naemah Abdul Rahman, Shaikh Mohd Saifuddeen, and Madiha Baharuddin. “Maqasid Al-Shariah Based Islamic Bioethics: A Comprehensive Approach.” *Journal of Bioethical Inquiry* 16, no. 3 (2019): 333–45. <https://doi.org/10.1007/s11673-019-09902-8>.
- Ishola, Abdullahi Saliu, Isa Olawale Solahudeen, and Ibrahim Akangbe. “Intellectual Property Rights for Innovations on the Internet: The Islamic Law Requisites.” *Arab Law Quarterly* 32, no. 4 (2018): 517–30. <https://doi.org/10.1163/15730255-12324046>.
- Kusuma, Purnama Hadi, and Kholis Roisah. “Perlindungan Ekspresi Budaya Tradisional Dan Indikasi Geografis: Suatu Kekayaan Intelektual Dengan Kepemilikan Komunal.” *Jurnal Pembangunan Hukum Indonesia* 4, no. 1 (January 2022): 107–20.
- Lemley, Mark A. “Faith-Based Intellectual Property.” *UCLA Law Review*, 2015. <https://doi.org/10.2139/ssrn.2587297>.
- Meirison, Meirison, and Zerly Nazar. “Intellectual Property Rights and Monopoly in the Perspective of Islamic Jurisprudence.” *Al-Ahkam* 31, no. 1 (April 2021): 49–68. <https://doi.org/10.21580/ahkam.2021.31.1.6656>.
- Mohamed Azmi, Ahmad Shazrin, Noor Rosly Hanif, Siti Mashitoh Mahamood, and Siti Nadiyah Mohd Ali. “Synthesizing the Maqasid Al-Syariah for the Waqf Property Development.” *IOP Conference Series: Earth and*

- Environmental Science* 385, no. 1 (November 2019): 1–7.
<https://doi.org/10.1088/1755-1315/385/1/012051>.
- Naghavi, Alireza. “Islam, Trade, and Innovation.” In *Advances in the Economics of Religion*, 449–60, 2019. https://doi.org/10.1007/978-3-319-98848-1_28.
- Nassery, Idris, Rumea Ahmed, and Muna Tatari. *The Objectives of Islamic Law: The Promises and Challenges of the Maqasid Al-Shari’a*. Vol. 1. London: Lexington Books, 2018.
- Niswah, Eva. “The Forms of Intellectual Property Rights Waqf as a Part of Productive Waqf.” *International Journal of Social Science and Religion (IJSSR)* 3, no. 1 (2022): 71–92. <https://doi.org/10.53639/ijssr.v3i1.64>.
- Nuraeni, Nuraeni, and Rona Ikram Putri. “The International Dimension of Communal and Traditional Intellectual Property Rights Protection in Indonesia.” *Intermestic: Journal of International Studies* 2, no. 1 (November 2017): 74–85. <https://doi.org/10.24198/intermestic.v2n1.6>.
- Othman, Norfaizah, Ummi Munirah Mohamad Zan, and Fadilah Mat Nor. “Investigating Rationales of Maqasid-Shariah and Well-Being Indicator for B40 Households.” In *The International Islamic Economic System Conference - The 9th IIECONS 2021*, 177–85, 2021.
- Putra, Muhammad Deovan Reondy, and Hari Sutra Disemadi. “Counterfeit Culture Dalam Perkembangan UMKM: Suatu Kajian Kekayaan Intelektual.” *KRTHA BHAYANGKARA* 16, no. 2 (September 2022): 297–314.
- Putri, Yunita Maya, Ria Wierma Putri, and H. S. Tisnanta. “Communal Rights As Hegemony In The Third World Regime: Indonesian Perspective.” *Indonesian Journal of International Law* 19, no. 2 (2022): 289–315. <https://doi.org/10.17304/ijil.vol19.2.5>.
- Ramadhan, M. Citra, and Fitri Yanni Dewi Siregar. “Constraints to the Protection of Communal Intellectual Property Through Inventory by the Directorate General of Intellectual Property.” *Kanun Jurnal Ilmu Hukum* 24, no. 3 (2022): 267–77. <https://doi.org/10.24815/kanun.v24i3.28098>.
- Rohman, Moh Mujibur. “The Benefit Principles of Istibdāl on Wakaf Objects: (Analysis of Dhawābith Al-Mashlahah Sa’id Ramadhān Al-Būthi).” *Jurnal Mahkamah: Kajian Ilmu Hukum Dan Hukum Islam* 6, no. 1 SE-Articles (June 2021): 17–36. <https://doi.org/10.25217/jm.v6i1.1246>.
- Said, Mohammed El. “Intellectual Property, Islamic Values, and the Patenting of Genes.” In *Patents on Life: Religious, Moral, and Social Justice Aspects of Biotechnology and Intellectual Property*, 133–51, 2019. <https://doi.org/10.1017/9781108659802.008>.

- Setyawan, Fadjar Ramdhani, Sudarsono Sudarsono, and Yuliati Yuliati. "Teori Ajaran Cita Hukum (Idee Das Recht) Di Dalam Perlindungan Ekspresi Budaya Tradisional Di Indonesia." *De Jure: Jurnal Hukum Dan Syar'iah* 13, no. 1 (June 2021): 126–39. <https://doi.org/10.18860/j-fsh.v13i1.10025>.
- Sumadi, Sumadi, and Octavia Gandra Sari. "The Benefit Segmentation Sharia Tourism in Indonesia." *Jurnal Ekonomi & Keuangan Islam*, 2022. <https://doi.org/10.20885/jeki.vol8.iss1.art8>.
- Uddin, Jamaluddin, Irwan Misbach, and Abdul Wahab. "The Distribution of Zakat Mal Based on Al-'Adl in Order to Improve The Welfare of The Mustahiqs in The Laznas of Baitul Mal Hidayatullah South Sulawesi." *Al-Ulum* 20, no. 1 (May 2020): 233–51. <https://doi.org/10.30603/au.v20i1.1146>.